# THE HISTORY OF THE *Original and Progreſs* OF Eccleſiaſtical Revenues:

WHEREIN

Is handled according to the Laws, both Ancient and Modern, whatſoever concerns matters Beneficial, the *Regale*, Inveſtitures, Nominations, and other Rights attributed to Princes.

Written in *French* by a Learned Prieſt.

And now done into *Engliſh*.

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TO THE

# READER.

IT may ſeem unneceſſary to ſay more of this Treatiſe, than that it proceeds from the famous Pen of Father *Simon*; who hath herein far outgon all who have written on the ſame Subject, even the Learned Father *Paul*.

This Work plainly

diſcovers what good Uſe the Eccleſiaſtics have made of the Pious Inclinations of the Laity, to their own Advantage: which may juſtly reflect on the Church of *Rome*, that great School of Politics; but ought not in the leaſt to prejudice the Honourable Eſteem, and Liberal Endowments, which a ſound Orthodox Church doth or ought to enjoy in a well-govern'd State.

A T A-

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THE

# THE HISTORY OF THE Original and Progress OF *Ecclesiastical Revenues.*

WHat is mentioned in the Acts of the Apostles, concerning the Primitive Christians having all things among them in Common, is not to be understood, as if private persons had been obliged to sell their goods, that they might render them common to all believers. For, that we may not fall into the errour of the Anabaptists, there is a great difference to be made betwixt a Custom

The Original of the Community of goods among the Primitive Christians.

that happened but accidentally in the Church of *Jerusalem*, and continued not there long, and a Divine Law, which can never be dispensed with. No other Law obliged Believers to it at that time, but the Law of Charity; and we are at present under the same obligation, seeing the goods which we possess, become in some manner common to our Brethren, when they fall into necessity and want. The Apostles were not ignorant of the Laws which *Moses* made in favour of the Poor, to prevent their being reduced to beggary. And in that sense we ought to explain the words of the *Psalmist*,(1) *I have not seen the Righteous forsaken, nor his seed begging Bread.* Where we are to observe that the *Jews* took to themselves the name of *Righteous*, to distinguish themselves from other Nations that Worshipped Idols. The Books of *Moses* contain many Laws which oblige the Rich, on several occasions, to make their goods common to the Poor, and one of the chief is the Law that prohibits the exacting of Usury from their Brethren. And that Law is still in force among them, in the low condition to which

(1) Οὐκ εἶδον δίκαιον ἐγκαταλελειμμένον, οὐδὲ τὸ σπέρμα αὐτῆς ζητοῦν ἄρτους. Psal. 37.25.

which they now are reduced, they being perſwaded, that that charity towards their Brethren, is of divine right. We are not then to inquire into any other cauſe of that Community of goods which was in uſe, in the Infancy of Chriſtianity, but the Laws of Charity, which are ſtill the ſame, though the practice of them differ according to the diverſity of occaſions. For ſeeing the Primitive Believers lived in Society, & that there were a great many poor among them, thoſe who had eſtates were obliged to ſell them, to ſupply the neceſſities of their Brethren.

The Apoſtles conformed exactly to the Cuſtom which was already eſtabliſhed in the Synagogues. They made a gathering on the days of their Aſſemblies, in imitation of the *Jews*, and during the week every one laid up what he could, to be delivered to thoſe who took the care of collecting their Alms. In the places where Chriſtians met, there were (1) Boxes, as well as in the Synagogues, for receiving the Alms of private perſons, and the money was diſtributed amongſt the Poor, the Orphans, Widows, and Sick.

(1) *Tertul. in Apolog.*

Now this distribution was not made indifferently by every one that pleased: But as in the Synagogues, there were Officers entrusted with that care, so likewise the Apostles appointed Deacons, or Ministers, to whom they gave the same Commission, reserving to themselves, nevertheless, the chief direction and oversight thereof. In a word, if we consult the Jewish Writers, and the present practice of their Synagogues, as to what concerns their Charity, we shall find that the Apostles have exactly followed their Discipline in that particular. They still send their Alms to *Jerusalem*, and to other places in *Judea*, for the relief of the Poor that live in those parts: And besides the constant Charity that they give in the Towns where they live, to those that are in want, they assist Forreign *Jews*, who make application to them, in their necessity; and for Proof of this, it would suffice to shew a Certificate signed by their *Rabbies*, after the same manner, as Letters of Recommendation, were granted to Believers in the First Ages of the Church; which gave *Lucian* occasion to say, that to become

become rich in a ſhort time, there needed no more but to pretend to be a Chriſtian.

At that time the Miniſters of the Church had no other Revenues, but what they gathered from the Charity of believers: For as to Tithes, First-fruits, and other Rights that belonged to the Levites and Prieſts, they were aboliſhed with the Sacrifice. Our Saviour having inſtituted a new form of Miniſtry, appointed alſo a new way of providing for the neceſſities of the new Miniſters. He received the Alms that were given him, and put them into the cuſtody of a Steward, to be diſtributed according as need did require. St. *Paul*, who ſpeaks often in his Epiſtles of the duty of Miniſters towards the people, and of the people towards their Miniſters, ſays no more, but conform to the words of our Saviour, that they who preach the Goſpel, ſhould alſo live by the Goſpel, and that they who ſerve at the Altar, ſhould participate of that which is offered upon the Altar; thereby alluding to the Offerings of the Old Teſtament He never makes mention of Tithes, nor of thoſe Dues

The firſt Revenues of the Church.

that were given to the Priests, because he supposes that, that Priesthood being abolished, the rights that from thence accrued to the Priests, ought likewise to be abrogated. And therefore, the Primitive Christians, who sold their estates, for the relief of the Poor, and maintenance of their Ministers, thought it not sufficient to bestow the tenth part, but freely gave all that was necessary, knowing that the right of Tithes and First-fruits, were but only Ceremonies, and Customs of the Old Testament; of which they retained no more, but what concerned Morality. So that Charity was the Rule of what they were to give to the Ministers of the Gospel. And St. *Paul* who hath made several good Regulations, concerning the Administration of these Alms, calls the Portion that was given to the Priests and Widows, *Honoraries*. This he doth, when he recommends to *Timothy*, (1) to *honour Widows that are Widows indeed*: For Widows had particular Offices in the Church, as well as the Priests, whom the same St. *Paul* affirms (2) *to be worthy of double honour*, that is, of a double reward.

(1) Χήρας τίμα τὰς ὄντως χήρας, 1 Tim. 5. 3.

(2) Οἱ καλῶς προεστῶτες πρεσβύτεροι διπλῆς τιμῆς ἀξιούσθωσαν. 1 Tim. 5. 17.

ward. In effect the term of honour is uſed by Lawyers, to ſignify the recompenſe that is given to the Officers of Juſtice, to Advocates and Phyſicians; and I make no doubt but that St. *Paul* borrowed it from the *Greeks* or *Helleniſts*, who ſometimes make uſe of it. In this ſenſe theſe words of *Eccleſiaſticus* are to be underſtood, (2) *Honour a Phyſician*, that is to ſay, *pay the Phyſician.* Now ſeeing the Prieſt-hood was a Real Employment, and Divine Function, St. *Paul* had reaſon to give it the Title *of honour*, which properly belonged to the Magiſtrats of States.

(2) Τίμα ἰατρὸν πρὸς τὰς χρείας τιμαῖς αὐτοῦ. Eccleſ. 38. 1.

The Church hath not only imitated the Synagogue in the way of diſtributing its Charity, but alſo, hath followed the Diſcipline obſerved amongſt the *Jews*, in reſpect of their Miniſters. The Synagogues were compoſed of a Ruler of the Synagogue, which the Helleniſt *Jews* called *Archi-Synagogus*, Prieſts or Elders, and Deacons; and that was the cauſe, why the Apoſtles eſtabliſhed in Chriſtian Aſſemblies, thoſe three ſorts of Miniſters under the names of Biſhops, Prieſts and Deacons. The Biſhop in

The Original of the Miniſters of the Church.

these Assemblies, had the same honour as the Ruler of the Synagogue amongst the *Jews*, had in their Synagogues. The Superiority of the Rulers of the Synagogue, in respect of the Priests or Elders, consisted only in some Titles of honour, as being the Chief amongst their Brethren. And therefore they are all comprehended under the name of Priests or Elders in the Hundred and seventh *Psalm*, where we have these words: (1) *Let them also exalt him in the Congregation of the People, and praise him in the Assembly of the Elders*; which was the place of their Meetings. So we find in the New Testament, that the names of Priest and Bishop are indifferently taken the one for the other; and that Assembly or Council of the Elders, which was called *Presbyterium*, consisted of the Bishop, and the Priests or Elders. The Bishop, or President, as the Ancient Fathers speak, had indeed the chief Direction or Superintendency; from whence he was called Bishop, which word is also found in the *Greek* of the Septuagint or Hellenists, but he made up but one Body with the Elders

(1) Ὑψωσάτωσαν αὐτὸν ἐν ἐκκλησίᾳ λαοῦ, καὶ ἐν καθέδρᾳ πρεσβυτέρων αἰνεσάτωσαν αὐτόν. Psal. 107. 32.

on

or Prieſts, who in Quality of Judges, had their Juriſdiction jointly with him: Hence we may infer that in the beginning of the Church, the management of affairs, and the Juriſdiction which is now called Epiſcopal, did not depend on the Biſhop alone, no more than the diſtribution of the Offerings, but on the whole Senate or Aſſembly of the Prieſts; and this continued ſo long as there was but one Church in every City, one Altar, and one Conſiſtory of Prieſts joined to their Biſhop, becauſe it was not eaſy then, for the Biſhop to become Maſter of the whole Juriſdiction and Adminiſtration of the Revenues. But ſo ſoon as it was neceſſary to encreaſe the number of Churches, there was ſome cauſe to fear, leſt thoſe who governed the new Churches, might attribute to themſelves the quality of Biſhops, finding themſelves at the head of a particular Church. And therefore the Biſhops began to take to themſelves authority over them, for which it was neceſſary to appoint, that there ſhould be but one Biſhop in every City, on whom the Elders or Prieſts ſhould depend, who were to take

The Original of the great Authority of Biſhops.

take upon them the Government of the new erected Churches, which were called *Titles*. St. *Jerome* ſtrongly maintains this opinion in his Commentaries on the Epiſtle of St. *Paul* to *Titus*, where he affirms that before this diviſion, each Church was governed by the Common Councel of the Prieſts; but that for avoiding all occaſion of Schiſm, one of theſe Prieſts or Elders was choſen to be the Chief, and to take upon him the care of the whole Church. He pretends that the names of Prieſt and Biſhop did not at all differ in the beginning, and that therefore St. *Paul* made uſe of them indifferently: Then he ſubjoyns, (1) That it is only Cuſtom which hath made Biſhops greater than Prieſts. And this may be confirmed by the authority of St. *Paul*, who writing to the Churches, under the name of Elders, comprehends both Biſhop and Prieſts.

(1) *Epiſcopi noverint ſe, magis conſuetudine, quam diſpoſitionis dominicæ veritate, Presbyteris eſſe majores. Hieron. com. in Epiſt. ad Tit.*

It is to be obſerved, however, that the Church being encreaſed, hath borrowed many terms and points of Government from the Republicks of *Greece*, and that when there was a neceſſity of erecting Dioceſes, it hath in

in that followed the diſtinction of Provinces, according as they were eſtabliſhed in the Empire. The Church which in its commencement allowed much to the people, grew afterwards more Ariſtocratical in its Government, when by experience it appeared, that the multitude of people ſerved only to confound and perplex affairs; and then the Polity of Ariſtocratick Republicks came in vogue. Nay we find in the very Acts of the Apoſtles, two ſorts of Aſſemblies, as well as in Republicks, The one is compoſed of the Chief amongſt the Believers, and is called *Eccleſia.* The other admits all indifferently; and that the Republicks of *Aſia* named *Agoraia*, which they have always diſtinguiſhed from the Aſſembly that they named *Eccleſia.* And therefore the name of *Eccleſia* or Church hath ſtill been given to Chriſtian Congregations, and conſtantly retained by the *Greeks*, who made the firſt Eccleſiaſtical Laws, from whence it hath been derived to the *Latines*, who are indebted to the *Greeks* for all the Eccleſiaſtical Polity that was ſetled in the firſt Ages. In this ſenſe we ought

Of the Government of the Church in its Commencement.

ought to interpret the words of (1) *Origen* concerning the Form of Church-Government, which he explains with relation to the *Greek* Republicks. The *Athenians*, for inſtance, called thoſe Biſhops, to whom they committed the care of the Towns that depended on their Commonwealth.

(1) *Origen contra Celſum.*

It was long before the Church owned any other name but that of Biſhop, to diſtinguiſh him who had the principal Adminiſtration; nay, when it was even neceſſary to denote a Biſhop, who had Juriſdiction over others, ſhe called thoſe Biſhops, (2) *the Firſt Biſhops of a Nation*; or made uſe of ſome other expreſſion, without inventing new words. We find nevertheleſs the name of Metropolitan in the Council of *Nice*; but the *Greeks*, whoſe Language is fruitful in new words, invented a great many, to expreſs the different Offices of the Eccleſiaſtick State, which were not ſo ſoon brought into uſe in the *Latine* Church. The names of Archbiſhop, Primate and Patriarch, are but Titles of Honour and External Juriſdiction; whereas the quality of Biſhop, and that alſo

(2) Τὰς Ἐπισκόπους ἐκάλεσε ἔθνους εἰδέναι χρὴ τὰ ἐν αὐτοῖς πρῶτον. *Can.* 33 *Apoſt.*

alſo of Elder or Prieſt, is a Character that marks the Ordination, which the Apoſtles borrowed from the Synagogue, that choſe its Miniſters by the Impoſition of hands. In that manner *Moſes* laid his hands on *Joſhua*, and the other Elders, who were preſently filled with the Holy Ghoſt: And if we will credit the Authority of the *Rabbies*, the power of Impoſing of hands belonged not only to the chief of the *Sanhedrim*, but alſo to the other Elders; which ſeems likewiſe to be confirmed by St. *Jerom*, (1) who pretends that the Elders or Prieſts enjoyed that Right a long time in the Church of *Alexandria*, where the Prieſts, who in imitation of the Apoſtles, were twelve in number, choſe one from among themſelves to be their Biſhop, on whom they all together laid their hands; as the Patriarch *Eutychius* obſerves in his Annals of the Church.

The Original of the Ordination of Biſhops and Prieſts.

(1) *Hier. in Epiſt. ad Evagr.*

Having now ſpoken of the Perſons who had the care of the Revenues of the Church, and obſerved wherein thoſe goods did conſiſt, it will not be amiſs to ſubjoyn that thoſe Revenues were rather a kind of Subſidies employed

The nature of Church-Revenues in the beginning.

ployed for the Relief of the Poor, than any real Rents. Nor was there need of any ſolemnity for conſecrating them to the Church, ſeeing they were not fixed, and the Laws of the Empire permitted not Chriſtians to poſſeſs publick Eſtates. After all, the Collections which we have mentioned, ceaſed not upon the death of the Apoſtles; for we read in one of the Apologies of St. *Juſtin Martyr*, (1) that in the Publick Aſſemblies Believers beſtowed their Charity after the Communion, and that one of the Brethren kept the money, to be afterward diſtributed among thoſe who were in want. That Cuſtom was alſo in uſe in the time of (2) *Tertullian*, and the Church had no other Revenues, but ſuch Alms or Contributions, until the time of *Conſtantine*, who permitted Churches to poſſeſs real Eſtates, and to be endowed with Lands and Inheritances. (3) *Pliny* the younger obſerves, that private perſons were prohibited to give their Eſtates to any Colledge or Society, but that they ought to chuſe certain and ſpecial Heirs, and not the Gods in general. It is true, the Laws made after-

(1) *St. Juſt. Apol.* 2.

(2) *Tertul. Apo.*

(3) *Plin. Epiſt. lib.* 5.

afterwards a Reſtriction, that one might bequeath or give his goods to lawful and allowed Colledges or Societies, and that by ſpecial Priviledge the *Jewiſh* Synagogues, which were of the number of thoſe Allowed Societies, were nevertheleſs excluded from that Priviledge: And becauſe Chriſtian Aſſemblies were always rejected under the Pagan Emperours, as unlawful Conventicles, it is certain the Church never enjoyed any Poſſeſſions, until the Fourth Century under the Empire of *Conſtantine*. All theſe Laws may be ſeen in the Body of the Civil Law, wherein they are inſerted.

The Original of immoveable Eſtates in the Church.

It was about that time then, that Churches began to be endowed, as well as the Pagan Temples, becauſe Chriſtian Congregations were no more then conſidered as Conventicles. The Emperour *Conſtantine*, granted them great Priviledges, and permitted People to beſtow upon them Poſſeſſions of all kinds. He ordained alſo that they ſhould inherit the Eſtates of the Martyrs, Confeſſors, and of thoſe who had been baniſhed, when the true Heirs did not appear. I ſpeak not here of the Donation

Donation which *Constantine*, accord-
(1) *Euseb. l. 2. de vita Const. cap. 36.* to some (1) Authors, made to the Church of *Rome*, because it is notoriously known that the deed is false, and that the Successors of *Constantine* possessed Lands that are mentioned therein. It may be affirmed that the Priviledges granted by *Constantine* to Churches, for injoying of Rents, have occasioned great disorders: Which
(2) *Potentiâ quidem & divitiis major, sed virtutibus minor facta est. Hier. in vita S. Malch.* made St. *Jerome* say (2) that the Church was indeed become more Powerful and Rich under Christian Princes, but that it was less Virtuous.
(3) *Chrysost. homil. 86. in Matth.* St. *Chrysostom*, (3) describes at length the sad State of Bishops and other Church men, since the Church enjoyed Lands and other fixed Revenues, because they forsook their employments, to sell their Corn and their Wine, and to look after their Glebes and Farms: Besides much of their time was spent in Law-suits. He wishes that he might see the Church in the State that it was in in the times of the Apostles, when it injoyed only the Charity and Oblation of Believers.
(4) *Possid. in vita Aug. cap. 24.* St. *Austin* was also in the same Opinion, and (4) it is reported in his Life, that

that he often refuſed the Inheritances which were offered to his Church, thinking it fitter that they ſhould be left to the lawful Heirs. And in the ſame Life we read, that St *Auſtin* would never purchaſe Houſes nor Lands, nor any other Poſſeſſions for his Church: Wherein he ſhewed his wiſdom and prudence; for nothing does more obſtruct the Charity of Believers towards Churches, than when they ſee that they enjoy vaſt Eſtates, the Revenues whereof are nevertheleſs more uncertain, than the Alms that are given to a Church that hath not the repute of being Rich. And ſo it was alſo, that thoſe, who knew St. *Auſtins* mind, ſold their Lands, and gave him the money; which the more willingly they did, as being perſuaded, that the good Biſhop beſtowed it on pious uſes, & not in making new Purchaſes for the enriching of his Church.

Though, at that time, Biſhops and Deacons had the care of the Revenues of the Church, yet notwithſtanding even in the time of *Conſtantine* many abuſes were committed in the management of them. And this made the Fathers

Abuſes in the Adminiſtration of Church-Revenues.

of the Council of *Gangres*, to make a Canon against the *Eustathians*, who divided among themselves the Revenues of the Church. It was decreed in that Council (1) that the Bishop alone, and those to whom he did commit the care of the Revenues of the Church, should receive and distribute what was bestowed on Churches. But it happened not long after (2) that the Bishops themselves abused their power: For most of them being Poor, and charged with Families, they reserved part of the Church Rents for their subsistence. And all that could be done, to put a stop to that corruption, was (3) to suffer them to give somewhat to their Relations, if they were Poor, but withal prohibiting them to sell the Estates that belonged to Churches. Nay, the Fathers were even obliged, not to leave the administration of the Revenues of the Church in the power of Bishops, Priests, and Deacons, without giving an account of them: For the Council of *Antioch* ordained, that the Bishops should give an account of the administration of those Revenues, in the Provincial Synod.

(1) *Conc. Gangr. Can.* 7. & 8.

(2) *Conc. Antioch. Can.* 25.

(3) Εἰ δὲ πένητες εἶεν, ὅπως χορηγεῖτω ὡς πένησιν, ἀλλὰ μὴ ὠφελάσει τούτων τὰ τῆς Ἐκκλησίας ἀπεμπολείτω. *Can. Apost.* 37.

And

And that the goods which properly belonged to Biſhops, might not be confounded with thoſe that appertained to their Churches, every Biſhop upon his Election (1) gave a liſt of the Goods and Eſtate, that he poſſeſſed, which was ſeparated from that of the Church, to be diſpoſed by will or otherwiſe at his pleaſure, according to the Proviſion of the Civil Law. But notwithſtanding all this caution, the Biſhops made themſelves ſtill Maſters of the Revenues of the Church, and the Fathers were obliged to create Treaſurers or Stewards to take the care of them, that ſo the Biſhops might apply themſelves entirely to the duties of their Office. Theſe Stewards were likewiſe neceſſary for preſerving the Revenue of the Church, which the Biſhops and other Church men did not employ according to the Canons. But becauſe they were appointed by the Biſhops, they relapſed again into the ſame abuſe, & the Poor had cauſe to complain of the ſame Biſhops, who gave them but a very inconſiderable ſhare of the Goods that were deſtined for their Uſe. Upon all theſe accounts

(1) Ἔστω φανερὰ τὰ ἴδια τοῦ Ἐπισκόπου πράγματα, εἴτα καὶ ἴδια ἔχει) καὶ φανερὰ τῆ κυριακῆ. *Can. Apoſt.* 39.

the Fathers of the Council of *Calcedon* decreed, That for the future the Stewards ſhould be choſen from among the Clergy, and that it ſhould be no longer in the power of the Biſhops themſelves to adminiſter the Revenues of the Church. That Office became ſo conſiderable in the Church of *Conſtantinople*, that the Emperours took from the Clergy the nomination of the Stewards, and appointed them themſelves. And this laſted until the time of the Emperour *Iſaac Comnenus*, who remitted that right to the diſpoſition of the Patriarch.

The Cuſtom of the Weſtern Church differs from that of the Eaſt.

The power of Stewards was not ſo great in the Weſtern Church, as in the Eaſtern; for ſeeing the Biſhops and other Eccleſiaſticks did not according to equity diſtribute the Church Revenues, and that beſides the Churches were meanly endowed, there was a neceſſity of making a particular deſignation of the uſe, to which theſe Rents were to be employed: And that was adjuſted in this manner; to wit, that the Biſhop with conſent of his Clergy, ſhould divide the whole Revenues of his Church into four parts, of which the

the First ſhould be for himſelf; the Second given to the Church-men; the Third to the Poor; and the Fourth and laſt applied to the Fabrick of the Churches. (1) *Gratian* relates a letter of Pope *Zoſimus* directed to an Arch-Deacon, where that diſtribution is mentioned, but without permitting the Rents of the Church to be diſmembred, as ſome Church men pretended, who would have had Lands aſſigned them for their portion. St. *Gregory* anſwering ſome Queſtions that were put to him by *Auſtin* the Engliſh Biſhop, confirms that Dividend, which had been already approved by ſeveral other Popes, and withal appoints that the Biſhops portion, ſhould not only be for himſelf, but for as many as were neceſſary for his Retinue, and for maintaining Hoſpitality. The Biſhops wrangled with their Clergy about that diſtribution, pretending that they had no right to the new Acquiſitions of the Church; but the ſame Pope St. *Gregory* adjuſted the matter in favour of the Clergy. The Prieſts pretended farther, that they ought to have two parts of the ſhare that was

(1) *Gratian. cauſ.* 12. *quæſt.* 2. *cap.* 23.

St. *Greg.* Pope.

A Diſpute about the diſtribution of the Revenues of the Church.

assigned to the Clergy; and that the other Churchmen ought to have but a third of the same. That matter was referred to the Bishop, who was to give to every one according to his merit and pains. Nevertheless St. *Gregory*, who in that followed a Law established in the Churches of the West, writing to *Austin* concerning the Discipline that he was to observe in *England*, tells him that it was more convenient to persist in the Community of Goods in the Church of *England*, than to introduce into it those kinds of dividends. And indeed it will appear in the sequel of this Discourse, that the dividing of Ecclesiastical Revenues, hath been the cause of most of the disorders that have happened in the Church; and I dare boldly affirm, that the thing that hath preserved a greater purity of the Ancient Discipline in the Eastern Church, has been chiefly, that the Orientals never made any such partitions. None but the Western Church hath put the Estates of the Church into Titles and Livings, in the same manner as if private persons were the absolute masters of those Estates.

The

The Barbarous Princes, who ſeized part of the Empire, brought great changes into the Church, and the Diſcipline of the Canons was onely preſerved in the Eaſt. The *Greeks*, nevertheleſs, have ſometimes remitted certain Eccleſiaſtical rights in favour of their Princes. But that is nothing, if compared with what hath been done under the Barbarous Princes in the Weſt.

A change of Diſcipline in the Church.

The Stewards of whom we have ſpoken, took upon them not only the care of the Revenues of the Church, by order of the Biſhops, but alſo preſerved them during the vacancy of the See, and diſtributed them among thoſe to whom by right, and according to the Canons, they belonged. But becauſe moſt part of the Church-men had Eſtates of their own, either by Inheritance or Purchaſes that they had made, there aroſe great difficulties upon their Death about the diſtinguiſhing of thoſe Eſtates: Some there were that pretended, that thoſe who lived on the Revenues of the Church, could not in conſcience retain their own Inheritance. St. *Jerom*

The Office of the Stewards.

St. Jerom.

who was of that opinion, is positive, that the goods of the Church were designed for the Poor; which agreed very well with the Edict of *Constantine*, that prohibited the Rich to enter into any Office of the Church, though he did it upon Politick Reasons, and for the good of the State. Most of the other Fathers were also of St. *Jeroms* mind, and St. *Austin* admitted no Clerk into his Church, till first he had disposed of all his goods, either in favour of the Poor, or by Sale. He was for having all Clerks really Poor, in imitation of the Apostles, and for living altogether in common upon the Revenues of the Church. Nevertheless it is to be observed, that he did not require that of them but as a greater perfection, and that he never thought it absolutely necessary for entring into orders, and enjoying the allowance of the Church, that one must possess nothing at all. Otherwise he must have gone against the Ancient Canons, which leave Church-men at liberty to dispose of their own Estates as they please. It is true these Canons were made in the Eastern Church, where most of the

Whether Church-men can keep their own Estates.

St. *Austin.*

Bishops

Biſhops having been Married before their Election, had Wives and Children to provide for; and where Prieſts and Deacons might Marry if they pleaſed. And therefore it was not reaſonable to take their Eſtates from them. Beſides, it muſt be conſidered, that when theſe Canons were made, Churches were but Poor; Nay and ſome time after *Conſtantine*, no Churches but thoſe of great Cities were Rich.

However, theſe Ancient Canons of the Eaſtern Church, were (1) renewed in the Church of the Weſt, though they had not the ſame reaſons for doing it. Church-men were only prohibited to bequeath by Will, the Goods which they had got in their Livings, becauſe Believers did not give to Churches, only to enrich the Church-men. If it happened, nevertheleſs, that the Biſhop died without making a Will, and had no heirs, then did the Church ſucceed to all his Eſtate. The Churches of *Spain*, who had got a *Latin* Tranſlation of the Ancient *Greek* Canons, imitated the cuſtoms of that Church, which were likewiſe propagated in other Churches of the Weſt.

(1) *Cauſ.* 12. *Queſt.* 3.

We

*Gratian.* We may here observe by the by, that *Gratian* is often mistaken; and that there is no credit to be given to his Citations, but when they are found to agree with the Ancient *Greek* Canons Nor are the very Summaries which he gives of Canons always true, as when it is marked in general, over the Head of the Canon taken out of the Council of *Tarragona*, that the Estate of the Bishop dying without a Will, ought to return to the Church; whereas it is barely said in the Council, that the Priests and Deacons shall make an Inventory of his Goods, and that according to the *Greek* Canons; to the end that what was properly his own, might be set apart from that which belonged to his Church. But this is not a proper place to correct the faults which occur in the Collection of *Gratian.*

(1) *Ammian.* (1) The Emperour *Julian* revoked most of the Priviledges granted to

(2) *Zozim.* Churches by *Constantine.* (2) Nay, he took from them their Endowments, alledging for a Pretext, that the perfection of Christian Religion consisted in Poverty. But *Valentinian* afterward

ward recalled the Edicts of *Julian*; though he did not confirm all the Grants that *Conſtantine* had made to the Church; and the Emperours that came after him, were more ſparing in their Liberality. But the Avarice of the Church-men made up what was wanting in the Bounty of the Emperours: For if we give credit to what St. *Jerom* reports of the Prieſts and Monks of his time, they ſpared no Trick nor Artifice whereby they might hook in the Eſtates of private Perſons. I ſhall make no ſcruple here to produce ſome proofs of it, ſince Cardinal *Baronius* hath done the ſame before me; and then it will eaſily appear that the *Anchoret* of whom *Sulpicius Severus* ſpeaks, had reaſon to ſay, (1) that nothing was more likely to ruine the Church, than great Riches. Seeing it would be difficult to tranſlate the words of St. *Jerom* with the ſame force and elegance, as they are in the Original, I ſhall only extract ſome paſſages in Latine out of his Writings; as firſt in one of his Letters to *Euſtochium*, he thus deſcribes what paſt at *Rome* among the Church-men.

Edicts of Emperours.

Exceſſive Avarice of Church-men.

St. *Jerom.*

(1) *Eccleſiam auro non ſtrui, ſed potius deſtrui.* *Sulpitius Severus in Dialog.*

(1) *Clerici*

(1) Hier. in Epist. ad Eustoch.

(1) *Clerici--osculantur capita matronarum, & extentâ manu, ut benedicere eos putes velle, si nescias, pretia accipiunt salutandi: --quidam in hoc omne studium vitamq; posuerunt, ut matronarum nomina, domos moresq; cognoscant; ex quibus unum, qui hujus artis est princeps, breviter describam. --cum sole festinus exurgit, salutandi ei ordo disponitur, viarum compendia requiruntur, & pene usque ad cubicula dormientium senex importunus ingreditur; si pulvillum viderit, si mantile elegans, si aliquid domesticæ supellectilis, laudat, miratur, attrectat, & se his indigere conquerens, non tam impetrat quàm extorquet.* In another of his Letters, he describes more to the life, the low and sordid Offices, which the Priests and Monks of his time rendred to Old Men and Ladies who had no Children, that they might catch their Estates and Inheritances. *Audio*, says he, *in senes & anus absque liberis quorundam turpe servitium, ipsi apponunt matulam, obsident lectum, purulentiam stomachi, & phlegmata pulmonis manu propriâ suscipiunt*, &c. In the Epistles of this holy Doctor

Doctor, we may have a full and lively Repreſentation of the Church-men of his time; and he cannot forbear to blame the vanity of Widows of Quality, who refuſing to marry again, that they might not be ſubject to a Huſband, liked very well to be courted by Church-men, that ſo they might bear the Rule. *Illæ interim*, ſays that Father, *quæ Sacerdotes ſuo viderint indigere præſidio, eriguntur in ſuperbiam, & quia maritorum expertæ dominatum, viduitatis præferunt libertatem.* His Commentaries upon the Holy Scriptures are likewiſe full of the like complaints againſt the Avarice of Church-men, whom he upbraids with their deſire of enriching their Relations with the Goods that belong to the Poor. I wave a great many other Reproaches that he makes to them, which got him the hatred of the Eccleſiaſticks and Monks of his Age. And nevertheleſs he ſaid nothing but what was true, and approved by all good men: So that when moſt part of the Prieſts and Monks cenſured him as a railing and violent man, (1) *Sulpitius Severus* undertook his defence,

(1) *Sulp. in Dialog.*

defence, and made the same complaints against the Church-men, whose unsupportable Vanity he condemns. These were not only then the grievances of St. *Jerom*, who in that cannot be accused of Passion, since that before him St. *Hilary* (1) compared the same Churchmen to the Scribes and hypocritical Pharisees, (2) who in appearance made long Prayers, and devoured Widows Houses. In a word, if men condemn St. *Jerom* of Passion, they must also condemn St. *Gregory Nazianzen*, St. *Basil*, St. *Ambrose*, and indeed the greatest Saints of that Age, who could not endure the Covetousness of the Churchmen. But nothing justifies St. *Jerom* more, than that the Emperours *Valentinian*, *Valens*, and *Gratian*, were obliged to make a Law against those corruptions, which is to be found in these words in the Code of *Theodosius*. *Ecclesiastici, aut ex Ecclesiasticis, vel qui continentium se volunt nomine nuncupari, viduarum ac pupillorum domos non adeant; sed publicis exterminentur Judiciis, si posthac eos ad fines earum, vel propinqui putaverint deferendos. Censemus etiam, ut memorati nihil*

(1) *Hilar. comm. in Psalm.*

(2) *Comedentes domos viduarum, & oratione longâ orantes.* Matth. 23. 14.

*Codex Theodos.*

Laws of the Emperours against the Avarice of Church-men.

*nihil de ejus mulieris, cui ſe privatim ſub prætextu religionis adjunxerint, liberalitate quâcunque vel extremo Judicio poſſint adipiſci, & omne in tantum inefficax ſit, quod alicui horum ab his fuerit derelictum, ut nec per ſubjectam perſonam valeant aliquid, vel donatione, vel teſtamento percipere, &c.* That Law, which was directed to Pope *Damaſus*, was read in the Church of *Rome*. (1) St. *Jerom* does not accuſe the Emperours of Injuſtice, for publiſhing a Law which ſeemed contrary to the Liberties of the Church; but he accuſes the Avarice of Church-men, who having ſlighted the Law of God, have been forced to obey the Laws of Men; and he aſſerts, that therein the Prieſts and Monks are inferiour to the Prieſts of Idols, and to the Societies of the infamous, who are not debarred from receiving Inheritances. The diſorders of Eccleſiaſticks muſt at that time have been very great at *Rome*, that Chriſtian Princes were obliged to make ſuch rigorous Laws againſt them.

(1) *St. Jerom* in his Letter to *Nepotian.*

Now ſeeing Monks come within the compaſs of the complaints that St. *Jerom* and the other Fathers have made againſt

The Original and Progress of Monks.

against Ecclesiasticks, it will be pertinent to speak a little of their Original and Progress, and to shew how they came to have a share in the Revenues and affairs of the Church. The Original of Monachism is commonly attributed to St. *Paul* the Hermite, and St. *Anthony*; in imitation of whom *Egypt* was entirely filled with Monks, whereof some were Solitary, and others lived in Community. That kind of Life afterward got footing in *Syria*, *Pontus* and the lesser *Asia*. Those of *Egypt* and *Syria* have still retained the name of St. *Anthony* their Founder: Whereas the others of the Province of *Pontus* and the lesser *Asia*, took the name of St. *Basil*, who brought from *Egypt* into those parts the Rule and Institution of St. *Anthony*. So that St. *Basil* and St. *Anthony* have filled the *Levant* with Monks, who at present bear their Names. St. *Athanasius* coming to *Rome*, and having there published the Life of St *Anthony*, many also in *Italy* embraced that kind of Life, which from thence was propagated into the other Provinces.

We must, nevertheless, have a care, not

not to confound the Clerks who lived in Community under the direction of their Bishops, with Monks. *Eusebius*, Bishop of *Verceil*, was the first in the West, who according to the Testimony of St. *Ambrose*, joined together two things which seemed contrary, to wit, the *Monastick* Rule to the manner of the living of Clerks. It is not to be imagined that these Clerks were true Monks, no more than those who embraced the same kind of life, under St. *Martin* and St. *Austin*. They borrowed only from the Monks, their way of living in common, being for that no less serviceable to the Church; whereas in the beginning, Monks lived out of Towns, were for most part Laicks; and so far from performing any publick Ministry in the Church, that their Profession wholly debarred them from it. All their Employment consisted in Prayer, and Labouring with their hands, and their study in reading the holy Scriptures. It is true, Bishops sometimes drew Monks out of their Monasteries, and associated them to their Clergy; but then they were no longer Monks, being reckoned in the

*Euseb. Vercel.*

The Clergy that lived in Community differed from Monks.

number of Clerks. St. *Jerom* always distinguishes those two kinds of life, and speaking of himself as a Monk, he says, (1) *Clerks are Shepherds, for my part, I am one of the Sheep*; And he always builds on this principle, that it is one thing to be a Monk, another thing to be a Clerk. *Alia monachorum est causa, alia clericorum.* He nevertheless acknowledges that Monks by their profession were not excluded from Ecclesiastical Employments; or the contrary, that Monachism ought to serve them as a Noviciat in order thereunto, when Bishops shall Judge them worthy. (2) *Live*, says he, writing to *Rusticus* the Monk, *in such manner as you may deserve to be a Clerk; and if the People or your Bishop, fix their eyes upon you for that end, do that which is incumbent on a Clerk.*

(1) *Clerici pascunt oves, ego pascor. Hieron. Epist. ad Heliod.*

(2) *Sic vive, ut Clericus esse merearis: quod si populus vel Episcopus te in Clericum eligat, age quæ sunt Clerici. Hieron. in Epist. ad Rust. Monach.*

Monks subject to Bishops.

The Monks at that time were Subject to Bishops, and ordinary Pastors having not so much as distinct places in the Church from the rest of the People, because they were of the number of Laicks. But since there happened several heresies in the Eastern Church, and that many learned Monks bravely oppos-

oppoſed them, it was thought convenient to draw them from their great ſolitudes, and to ſettle them in the Suburbs of Cities, that they might be uſeful to the People. And St. *Chryſoſtom* thought it even fit to call them into Cities. Which was the cauſe that moſt of them, applying themſelves to ſtudy, aſpired to the Clergy, and with much precipitation got into holy Orders, whereof Pope *Zoſimus* complains in one of his Epiſtles. But ſeeing they were uſeful to Biſhops, not only in Spiritual, but Temporal affairs, they got into great Reputation; and the ſame Biſhops who were glad to have a numerous Clergy, and fit perſons about them to carry on their deſigns, gave them conſiderable Offices, wherein they behaved themſelves excellently well, as appeared in the affair of *Neſtorius*. But having abuſed the authority that was put into their hands, and growing inſupportable to all People, even to the Biſhops themſelves, becauſe of their vanity and their medling in all kinds of buſineſs without the permiſſion of their Ordinaries, the Fathers of the Council of *Calcedon*

thought fit to make Canons again
Monks, for putting a ſtop to the di
orders which they occaſioned in th
Church. Wherefore it was decreed
that Council, that for the future, Mon
ſhould be wholly under the Juriſdict
of Biſhops, without whoſe permiſſi
they ſhould meddle no more in any
fairs whether Civil or Eccleſiaſtical
that they ſhould not leave their Mon
ſteries to ramble up and down, and
frequent Towns; that they ſhould n
build any Monaſtery or Chappel, wit
out conſent of the Biſhop of the plac
and that they ſhould be ſecluded fro
Eccleſiaſtical Employments, unle
called thereunto by their Biſhops, whe
they ſhould judge it neceſſary.

Canons againſt the Monks.

And thus was the Canon law R
eſtabliſhed in regard of the Monk
who had not continued long witho
ſhaking it off, and they were put in
an abſolute dependance on Biſhop
who took care of Monaſteries as we
for the Spiritual as Temporal. As th
Monks of that time were but part o
the People, ſo they had no other tem
poral Revenue alſo, but what the
gained by their labour, and a ſha

The firſt Revenues of Monks.

ſin the Alms, which the Biſhop cauſed to be given unto them, if they were in want, in the ſame manner as to the other Poor. Beſides that, the People gave them their Private Alms, that they might pray to God for them. Some of them, nevertheleſs, kept ſomewhat of their Patrimony; but St. *Jerom* blames them, as counterfeit Monks, who followed not the Rules of Evangelical poverty. As to the Spiritual, they came to the Pariſh Church with the reſt of the People, and ſometimes they were allowed to ſend for a Prieſt to adminiſter the Sacraments unto them. At length they were permitted to have a Prieſt of their own number, on condition that he continued Monk, and only officiated in the Monaſtery. This gave them occaſion of having Churches apart, and of making a kind of ſeparate Body. After that it was impoſſible for Biſhops to hinder them from performing all Eccleſiaſtical functions in their Monaſteries; and ſince that time there have always been diſputes betwixt the Biſhops and the Monks, becauſe the Monks on many occaſions refuſed to ſubmit to the orders of the Biſhops, which

*St. Jerom.*

*The Original of the Churches of Monks.*

they pretended to be contrary to the Discipline of their Monasteries.

Monks in the West before St. *Benet.*

Though at that time most part of the Monks were in the East, yet for all that, there were a great many also in the West, before St. *Benet* planted a particular Order there. St. *Jerom*, St. *Ambrose* and St. *Gregory* make mention of Monks in *Italy*, amongst the *Gauls* and in several other parts of *Europe*. Besides, all the Authors who have written of the beginning of the Christian Religion in several Countries, speak of Monks that were there.

The difference betwixt the Ancient and Modern Monks.

There was this difference, nevertheless, betwixt the first Monks that were in *Europe* before St. *Benet*, and those that came after him, that the first were barely Monks, without being addicted to any particular Order. To be a Monk was sufficient, to make them received as such, in all Monasteries whereso'ever they travelled. There was no talk then of particular Rules and Institutions But every Monk laboured to improve himself by the example of others, and to embrace what he thought most perfect in the Monastick life. So that, it may be said, that the Monks both of the East and West were all of

one

one Order, having at that time no Mark of diſtinction amongſt them. The ancient Rules that have been written by the Primitive Monks, ought rather to be lookt upon as different Commentaries upon the Monaſtick life, than different Rules; for the intention of thoſe who embraced that kind of life, was not to diſtinguiſh themſelves by particular Rules from the manner of living of other men, but to ſubmit themſelves by a more particular reſignation to the Maxims of the Goſpel, and to find out all poſſible ways how they might live up to the Counſels of our Saviour, who will have us to wean our hearts altogether from the World, that we may follow him alone who is above it.

I ſhall not here ſpeak of the Inſtitution of St. *Benet*, which is in the hands of every body; but ſhall only obſerve by the by, that the deſign of that Saint was not to make any innovations in the Monaſtick life, but to make a Collection of what he found moſt perfect in the Rules and Inſtitutions of others. Matters are much altered ſince. All the ſeveral Orders of Monks make now a days ſo many

petty different Republicks in the Church, and are so many little States who have all their several interests. But let us now return to our Subject concerning the Original and Progress of the Revenues of the Church.

Changes in Church and State.

No sooner were the Barbarous Kings become Masters of a part of the Roman Empire, but the Civil and Ecclesiastical Laws suffered great alterations. There was a necessity of complying with the humor and temper of these new Conquerours, who medled in the affairs of the Church. There was not now, as formerly, the same liberty in electing of Bishops. Princes thought of securing their States, by conferring Bishopricks only on such as they could rely upon. So that Ecclesiastical dignities began to be look upon, as mere Lay-Offices, at the disposal of Princes, with which they could Reward those that served them. And which was more pernicious to the Church, Princes and other great Lords began to make no more distinction betwixt goods consecrated to God, and goods Profane. The necessity of the times must be born with; and

the

the great Wars that Princes were engaged in, was the cauſe that the beſt part of the Revenues of the Church, fell into the hands of Lay-men. They made Contracts of Alienation about them, as about other Poſſeſſions; and theſe Contracts paſt for lawful, when they were made in the uſual forms. No body oppoſed it. The Biſhops & Monks treated often with Laicks about thoſe concerns, either by way of Exchange or Purchaſe. The ancient *Cartularies* or Regiſters of the Monks are full of ſuch kinds of Contracts; wherein it appears that Children ſucceeded to their Fathers as well in Church livings, as in other Eſtates. The Counts or Judges decided the differences that aroſe amongſt private perſons about ſuch Eſtates, in the ſame manner as about other Inheritances and Poſſeſſions.

The Revenues of the Church in the ſame condition, as temporal Eſtates.

It is true ſome ſcrupulous People made a Diſtinction betwixt Altars and Churches; comprehending under the name of Churches, Lands, and other Revenues for which men might contract; and aſſigning a Prieſt to the Altar, who was to have a Salary for ſaying Maſs and performing other Eccleſiaſtical

A diſtinctio betwixt Churches an Altars.

Eccleſiaſtical Functions. But ſome who were not ſo ſcrupulous made no ſuch imaginary diſtinction. For in the ancient *Cartularies* there are to be found forms of deeds of alienation of Churches and Altars, with the Bells, Chalices, Croſſes and other Ornaments of the Church. This was practiſed even in *Italy*, before the Popes entred into the cogniſance of the goods of the Churches, which depended not on their Dioceſe. To theſe troubleſome times we may attribute the total Ruine of private Church-men, who were obliged to take wages from thoſe who poſſeſſed the Churches. And which is more unhappy, the greateſt part of thoſe Revenues are fallen into the poſſeſſion of Cathedral Churches and Monaſteries, to which they did not at all belong. The truth is there are forms of Contracts to be found in the ſame *Cartularies*, which make it appear that Monks have bought ſeveral Churches from Lay-men; but part of theſe Churches had been uſurped by the Laicks from the Church-men, to whom they ought to have been reſtored, and not ſold to the Monks.

The Ruine of private Church-men.

When

When the adminiſtrations of Church Revenues were erected into Benefices, or perpetual Titles, the Church-Men who were hired by the Chapters of Cathedral Churches, by the Monks, and even by Laicks, became perpetual Vicars and Curats. But the beſt part of the Benefices remained ſtill to the Canons and Monks, who took to themſelves afterward the Quality of Primitive Curates. Beſides, ſince private men were not able, Princes and other great men bought the Churches from thoſe Church-Men, and gave them to the Monks, who entertained Secular Prieſts, to take the care of adminiſtring the Sacraments to the People; all the Revenue and Tithes in the mean time remaining to the Monaſteries. Wherefore, it will not be amiſs to explain in this place more particularly, the Original and Progreſs of the Revenues annexed to Monaſteries, and at the ſame time to ſpeak of their priviledges and exemptions. A great part of what we ſhall ſay of Monaſteries, being alſo applicable to other Eccleſiaſticks.

We have ſhown before, that Monks having

The Original of Lands and other Revevenues belonging to Monasteries.

having made profession of poverty, lived only by their labour, and the Alms they received as being poor. And since they were not employed in Ecclesiastical Functions, they could not apply to themselves these words of St. *Paul*, *They which wait at the Altar, are partakers with the Altar.* And therefore it seems they ought never to pretend to the enjoyment of Church Revenues, which according to Natural & Evangelical Law, belong to none but the Ministers of the Church. The contrary notwithstanding hath come to pass; For most part of Church-Men have been deprived of the Revenues that belonged to them, and the Monks endowed therewith. It hath been already observed that Monks applied themselves much to Prayer, and that that got them the Charity of many private persons. But since Bishops allowed them to have Oratories or Churches for their own use, this Charity was doubled and People began to leave their Parish Churches, and flock to their Chappels. Nay there were some Monks that made Fonts in their Monasteries, in the same manner as there are

are in Baptiſmal Churches. The Biſhops did, indeed, forbid them to adminiſter any Sacraments, but to thoſe of their Monaſtery, and denied them Baptiſmal Churches. But though they were at that time ſubject to them in all things, even in what concerned the Monaſtick Diſcipline, yet it was not in their Power to hinder the People from giving them Charity. There were, nevertheleſs, ſome Biſhops who would have reduced them to the obſervance of the Ancient Canons, and not ſuffered them to have Prieſts among them: But Pope *Gregory*, who was favourable to the Monks, wrote in their behalf to one of his Suffragans, that he ſhould permit them to Celebrate Maſs in their Monaſtery; and that was chiefly the Original of private Maſſes, which have been very uſeful to the Monks, and bring at preſent ſome profit to moſt Religious Societies.

The Original of private Maſſes.

It is to be ſeen in Ancient Manuſcript Miſſals, that in that which they call the Canon of the Maſs, mention was made of the Alms which the Prieſts received: For whereas the Prieſt ſays only

only these words, *Remember Lord thy Servants and Hand-maids, and all who are present*; He heretofore said, *Remember, Lord thy Servants and Hand-maids, who make me subsist by their Alms.* With many other words which are not at present, in the Canon of the Mass. As it hath always been the belief of the Church, that Prayers, and especially those of the Sacrifice, were very advantageous to the dead; so the Monks quickly found the benefit of having Priests among them, thereby to attract the Charity of the People, which turned to very good account to them. To them may likewise be Attributed the Original of Private Chappels, and the multiplication of Altars, for celebrating several Masses, at one and the same time: For, according to Ancient Custom, it was not lawful to say more than one Mass, at which all assisted, and it was even a thing unheard, that many should celebrate Mass the same day, upon the same Altar: Which Custom is still observed in the Eastern Church.

(1) *Memento domine famulorum famulatumque tuarum, & omnium circumstantium. Memento domine, famulorum famulatumque tuarum quorum eleemosynis sustentor. Can.* Missal. MS.

In the Formularies of *Marculphus*, many Deeds of Cessions or Donations, in

in favour of Monaſteries are to be found. The moſt Common form was expreſſed in theſe Terms: JN. *the Son of* N. *give to ſuch a Monaſtery* (1) *for the remedy of my Soul, ſuch & ſuch goods.* Children made the like Donations to Churches, and eſpecially to Monaſteries, for the repoſe of the Soul of their Father or Mother. It was enough for moſt part, to put theſe Terms in general into the deed, (2) *For the remedy of my Soul, or of the Soul of my Father or Mother,* without particulariſing the Number of Maſſes, as it is practiſed at preſent. And by that means they might receive all the Foundations that preſented, without being obliged to encreaſe the Number of Prieſts. It is true, there are other Forms of Pious Legations, which are larger, and wherein, beſides theſe terms, *pro remedio animæ noſtræ,* it is likewiſe added, *ut pius deus & dominus noſter, Jeſus Chriſtus peccata noſtra dimittere & minuere dignetur, & paradiſi portas nos gaudentes introire jubeat; & ut in ultimo tremendo Judicio non inter hœdos ad ſiniſtram, ſed inter oves ad dextram aggregari mereamur conſortio, &c.*

(1) *Pro remedio animæ meæ.*

The form of Ancient Donations.

(2) *Pro mercede animæ meæ, vel genitoris & genitricis meæ.*

*Ann.* 1061.

&c. But in these Deeds there is only mention made of Prayers in General. There are nevertheless pretty Ancient Forms, wherein mention is made of particular obligations, wherewith the Founders or Benefactors charge the Monasteries: But these Deeds are very rare, and even sometimes supposititious. The Emperour *Lovis* II. Son of *Lotharius*, in a Priviledge which he granted to the Abbey of *Casaur*, seated in the *Abruzzo*, of which he was the Founder, obliges the Monks to say daily three Masses for him, to sing the Hundred and twentieth *Psalm* in all the Offices and Hymns of Vespers and Matins; *and that for the ransom or remedy of his Soul.* This priviledge is Printed at the end of the sixth Tome of the Book Entituled, *Italia Sacra*; and though the Author hath taken it out of some *Cartularies*, yet there appear several Additions and Marks of Forgery, which I found by comparing it with an Ancient *Cartuarie* of that Monastery, where the same Priviledge is written without all these Additions. It is true the Number of the Masses, and the other Obligations that are in Print

Print, are likewiſe in the Manuſcript, but ſeeing in that *Cartulary*, there are many other Priviledges of the ſame Emperour, in favour of the Monaſtery for the ſame thing, where theſe Conditions are not to be found, there is ground to doubt of the truth of that Priviledge; beſides that in the firſt Deed of the Foundation, there is nothing of it mentioned. However it be, it is certain that thoſe kinds of Grants contained nothing commonly, but Obligations for Prayers, and ſometimes for Maſſes, and that but in general: Which hath much contributed to the augmenting of the Revenues of Monaſteries, becauſe the Monks could ſtill receive new Foundations & Pious Legacies, without obliging themſelves for all that to any new Obligations; and private Perſons who were perſwaded, that the Prayers of the Monks would be available to them, made no difficulty of giving their goods to Monaſteries.

Means of acquiring Eſtates among the Monks.

By this means the Monks have acquired great Eſtates in Lands, which becauſe they would not labour them themſelves, they let out by a kind of Leaſes or Copy-holds, which they

called *convenientiæ*. There was no notice taken at that time of the Canon Laws, which prohibit the Alienation or Farming out of Church Lands, for a long term of years; they were then as all other Goods and Estates, subject to the Civil Laws, and Customs of places. Bishops and Abbots sold and exchanged the Rents of their Churches, without consulting the Pope. The Lease, which they termed *convenientia* or agreement, was for a certain number of lives; so that the Lands were engaged for many years on Condition of a yearly Revenue paid to the Abbey: And for greater security it was specified in the Deed (1) *That so much Land was let by way of loan, to the third Generation, to be laboured and emproved, and the profit thereof enjoyed, without permission to sell, exchange, or any ways engage the same.* This way of letting of Leases is still in use in *England*; and the Monks made use of it heretofore, as all other Church men, having the same liberty as they had to purchase, sell and exchange: Whereas in the beginning they made a scruple, of enjoying the property

(1) *Ann.* 970. *Ad usum fruendi per nostrum præstitum, cultandi, & exfructandi, non vendendi, nec donandi, nec concambiandi, &c.*

property of any Lands, only they ſometimes laboured and manured Lands, that no body claimed a right to, for their own ſubſiſtence.

There is mention made in the treatiſe of matters Beneficiary attributed to *Father Paul*, of a form of a Contract called *Precaria*, which hath much enriched Monaſteries. The Old *Cartularies*, are full of ſuch kinds of Deeds, which conſiſted in a Donation made by private Perſons, of their Eſtates to Churches, which they obtained back again from the ſame Churches, by Letters which they call'd *Precarias*, or *Precatorias* to be poſſeſſed by a kind of Copy-hold, or Leaſe for Lives; for moſt part granted a Leaſe for five, ſix, and even for ſeven Lives, on condition of paying a yearly Revenue to the Monaſtery. People beſtowed their Lands more willingly upon the Church, when they perceived that they ſtill reſerved the profits of them for many years. And I have ſeen in ancient *Cartularies* forms of *Precarious* Contracts, wherein private Perſons ſold their Eſtates to a Monaſtery, and afterward obtained (1) Letters or Leaſes of them to the

An Explication of the Contract called *Precarius*.

(1) *Literas precarias uſq; in quintam generationem* Under *Louis* II Son of *Lotharius*.

Fifth Generation: So that after the Fifth Life, the Monasteries could dispose of the Lands, whereof they had the property, from the date of the Contract, the sellers enjoying only the Profits, upon Condition of paying yearly a certain sum of Money, and obliging themselves to cultivate (2) and improve the Lands, without any Power to sell, give, engage or exchange the same according to the tenour of the Contract or Deed. In those days there were many other Deeds of the like nature, which were authorised by the Civil Law, and Customs of Countries; and no distinction was made betwixt Secular and Church Lands. Monks were allowed to purchase and sell, in the same manner as Lay-men.

(1) *Beneficiali ordine usu fruendi, cultandi, laborandi, meliorandi, non verò vendendi, nec donandi, nec concambiendi, &c.*

Other means of Acquisition.

Those who embraced a Monastick Life, contributed much also to the enriching of Monasteries: For it commonly happened that they who made choice of that Profession, thought it not enough to give themselves to God, unless likewise they offered all they had; of which they made a Conveyance, according to the forms used in several Countries. The Tenour of that Deed

Deed, is to be found in the Ancient *Cartulare* of *Caſaure* in theſe terms: *I* N. *Son of* N. *in ſuch a year of the Emperour* N. *and of the Count* N. *offer and give, of my own free will and motion, this preſent day, my proper Perſon, and all the goods which I poſſeſs in ſuch and ſuch places, to ſuch a Monaſtery, where I intend to live the reſt of my days.* And for the greater ſolemnity of this offering, it was made in the Church, where the Perſon laying his hand upon the Altar, was, with all his Eſtate, offered to God. It is alſo to be obſerved, that the profeſſion of a Monaſtick Life, hindred not the Monks from inheriting the goods of their Relations, which they might diſpoſe of in favour of their Monaſtery. Beſides, Widows, who having taken the Veil from the Hand of the Biſhop, could not Marry again, gave part of their Eſtates to the Monaſtery or other Churches, of which a Deed paſt in the following Tenour: *I* N. *Daughter of* N. *the Servant of God, who have taken the Veil of Religion, give to* N. *Abbot, or to ſuch a Monaſtery, ſuch and ſuch goods for the remedy of my Soul, and of the Soul of my Husband.*

Besides all these ways that have brought great wealth to Monasteries, it is to be observed, that the Constitutions of the Order of St. *Benet*, allowed a Monk to leave the Society of his Monastery, that he might live Solitary and an Anchorite, which was called, (1) *of a cloystered Monk to become Anchorite*. These Anchorites, who retired from the Monastery, with the permission of their Abbot, went and lived in some neighbouring place; and they were not so Solitary, but that they were visited by the People, that came to recommend themselves to their Prayers. They received large Alms, as being esteemed holier than the rest; and took all kinds of Donations, whether in Lands, or Moveables. When they were grown Rich in one place, they went to another, where they met with the same Charity from the People. The Estate which they had acquired belonged to them, and before their death they made it over to the Monastery, out of which they came. And that their Donation might be in form, an Act past upon it in these terms: (2) *J. N. Priest and Monk*

(1) *De Claustrensi fieri Archovitam.*

(2) *Cartulary of Cassure. Ann.* 1056.

*Monk of ſuch a Monaſtery, out of which I came with Permiſſion of the Abbot, that I might lead a more retired Life, give to my Abbot* N. *for the repoſe of my Soul, all the goods which I poſſeſs, and which I have purchaſed with his Permiſſion.* The Deed of Donation contained a liſt of Goods, Lands and Churches, which theſe Anchorites left to their Monaſteries, and at the ſame time they delivered up the Deeds of private Donations, which were kept among the other Records.

Beſides all this, Monaſteries made no difficulty to ſell the Ornaments, and conſecrated Veſſels of their Churches. There is mention ſometimes made in Ancient *Cartularies*, of Chalices and Silver Croſſes given in payment for Lands bought from private Perſons, when there was no neceſſity for it. But what is more ſurprizing, Monks bought indifferently from all ſorts of men, and often enough from thoſe who had abuſed their Authority in ſeizing the Goods of the Poor: Which gave encouragement to many great men, to uſurp the Eſtates of their Neighbours, becauſe they were ſure to find Monks, to whom they could ſell them, we find a very

considerable Instance of this in the *Cartulary* of the Abbey of *Mire* in *Suisserland*, which hath been Printed. The Monk who compiled the Acts of that Monastery, having reckoned up the Lands and Possessions which lawfully belonged to the Abbey, gives afterwards an account of goods (1) that had been acquired by unjust means. That good Monk says, that he was obliged to publish to the World, those unjust Acquisitions, that he might therewith acquaint his Brethren, and discharge his own Conscience: Then he mentions a Golden Chalice, enriched with Pretious Stones, and two Silver Crosses, with which and coined Silver, they bought some Lands which had been by a Person of Quality unjustly taken from Poor Country People: And in fine, having represented the injustice of such kind of Purchases, he subjoyns, that men should take heed, not to mind their Body with so much care, as to lose their Souls, by injoying unlawful and usurped goods. (2) Nevertheless after these reflexions, he spares not to reckon up the ill purchased Goods, as well as the rest. For it is very rare for Religious Communities

(1) *Quæ cum injustitiâ & rapinâ, aut violentiâ congregata, aut acquisita sunt.*

(2) *Dum unusquisq; hoc solum attendere debeat, ne ita corpus nutriat, ut animam perdat, cogitetque quid prosit, si latro rapiat, & monachus comedat.*

munities to make reſtitution; no man in particular thinking himſelf obliged to it.

The Priviledges granted by Princes to Monaſteries, hath alſo much contributed to the preſervation, and encreaſe of their Revenues. Thoſe Priviledges, which were called Charters of Freedom and Royal Commands (1) exempted Monaſteries from ordinary Taxes; and Princes having once taken them into Protection, no man durſt moleſt them. Nay when they had any ſuit with their Neighbours about controverted Lands, it happened very ſeldom that they loſt the cauſe; becauſe the Judges Commiſſionated by Princes, moſt commonly favoured the Monks, who were looked upon as men belonging to the ſame Princes, and whoſe Lands were in ſome ſort reckoned of their Demain, eſpecially when Princes were the Founders of the Monaſteries. The Original of Inveſtitures, which have cauſed ſo much trouble in the Church betwixt Princes & the Pope, proceeds from ſuch Foundations, & in the beginning they ſignified no more, than the Letters whereby the Prince reveſted or inveſted a Church, to ſpeak in the Language of thoſe times.

(1) *Cartæ libertatis & præcepta regalia.*

Nay

Nay the very deeds that private Men made contained the term *Inveſt*, which ſignified giving, and putting men in Poſſeſſion of *Lands*. Now that this might be made more ſolemn, ſome ceremonies were added, which may be called *Fictiones juris*, *Fictions of Law*.

I have found in an Ancient form of Inveſtiture made under the Emperour *Louis* II. That the Judges, and other Lords commiſſionated by the Prince, gave Inveſtitures in his abſence, of which an Inſtrument was left, ſpecifying the year of the Emperours Reign, and the years of the Count or Judge of the places, which was ſigned by the other Judges, and Witneſſes preſent at the Ceremony. The form was conceived in theſe terms, (1) N. N. *inveſtierunt per demandationem Auguſti, per colonnam de curte, &c. N. abbatem.* In other forms of Inveſtitures we find *per annulum*. In effect, the cuſtom was to make uſe ſometimes of a ſtaff, ſometimes of a Ring, and moſt commonly of both together. When theſe Inveſtitures were made by Princes, that ſtaff was called the *Royal Staff*, in the ſame manner as their Priviledges were called

(1) *Cartulary of Caſaure.*

ed (2) *Royal Charter, Royal Command, Royal Juſſion, Royal Proteſtion*; And at length it was called (1) *Royal Scepter*. The Inveſtitures of Biſhopricks were given *per ſceptrum regale*, as it is mentioned in ſome Authors, & Ancient *Cartularies*.

(2) *Carta regalis, præceptum regale, Juſſio regalis, defenſio regalis.*
(1) *Sceptrum regale.*

Although *Charlemain* and his Succeſſors referred the Election of Biſhops to the Clergy and Monks, according to the ancient Canons, yet they were never made without the conſent of Princes, who moſt commonly deſigned thoſe who were to be choſen; and the Electors durſt not do otherwiſe, becauſe from them muſt be obtained the Inveſtiture of *Lands*, Priviledges and Immunities. This was not only obſerved in *France* and *Germany*, but even in *Italy*. It is to be found in the Ancient *Cartulary*, of the Abby of *Caſauxe*, founded by the Emperour *Louis* II. That the Monks of it took always the Inveſtiture from the Emperours and Kings, without ever having recourſe to the Popes, until the Wars that happened betwixt the Popes and *German* Emperours. For then, as it is obſerved by the Monk who wrote the Chronicle joyned to that *Cartulary*, (1) the

Inveſtitures depending on Princes.

(1) *Ann.* 1073.

the Canons and Monks were obliged apply themselves to the Popes, for taining priviledges, and permission proceed to a New Election, in respe that the Wars hindered them from dressing themselves to the Emperour That happened in *Italy* under the Pontificat of *Gregory* VII. who with much vigour attacked the Investiture Princes. And although the Mon of *Casaure* had already obtained fr Pope *Leo* IX. A Priviledge like those which they obtained from the E perours, yet they complained that Wars hindred them from having recou to the same Emperours, as if they only owned the Popes for the right Investiture, because they were constra ed to do so by the necessity of the tim

*Cum non possent ad Imperatorem ire, quia jam discordia & dissidium inter Romanam Ecclesiam & Imperatorem Teuthonicorum parabatur, ad praesentiam Apostolicam sedis accessérunt.*

The same History informs us, that Canons and Monks did not chuse th Bishops and Abbots, before they had quainted the Emperours and Kings. A therefore in the Elections of Bishops Abbots which were made by the wh Body of the Canons, and Monks, consent of Princes was always menti ed, but not a word of the Pope, who that time did not concern himself th

The Elections depended not on the Pope, no not in *Italy*.

heſe Elections, no not in *Italy* as appears manifeſtly by the *Cartulary* of *Cajaure*, & the Manuſcript Chronicle annexed to it. This was ſtill obſerved under the Emperour *Henry* III. For that Chronicle makes mention of a (1) Monk named *Dominick*, who was choſen by the whole Community, with conſent of the ſame Emperour. The act of that Election is mentioned at length in the *Cartulary* with the Subſcriptions of all the Monks who choſe *Dominick*; and it is ſpecified in the beginning of that Act, that they all with one voice, from the higheſt to the loweſt, choſe *Dominick* Monk & Prieſt: then he adds, that that was done with the conſent of *Elelin* Chancellour to the Emperour *Henry*. The ſame Monks in that Chronicle affirm beſides, that they were obliged to have recourſe to Pope *Urban* II. Becauſe the *Normans* ſuffered them not to apply themſelves to the Emperour. The Author of the Chronicle adds, that their Abbot *Grimualdus*, went to Pope *Urban*, to declare to him the ſad condition to which the Wars had reduced the Abbey, and that ſince that time, it (2) began to be under the Protection of the

(1) *Dominicus electus in Abbatem, ab omni congregatione, conſenſu Imperatoris Henrici venerabilis Chrradi filii. Ann.* 1047.

(2) *Sub protectione Romanæ Eccleſiæ, quam hactenus Abbatia ſancti Clementis ignoraverat, quia ab Imperatoribus gubernabatur, retrò collocari.*

the *Roman* Church, having alwa
been before under the protection of t
Emperours.

But it is more observable what he sa
in the same Chronicle (1) that the Abb
*Grimauldus* was the first that made use
the Pastoral Staff which he received fro
the Pope for the Investiture of the Abb
& that all the other Abbots his predec
sors, had carried a Royal Scepter, whi
the Emperours gave them. And the
fore the Monk who wrote the *Car*
*lary* of that Abbey represents on t
one side Pope *Urban*, and on the other, t
Abbot *Grimuald*, in whose hand the Po
puts a Crosier, whereas he had repres
ted the rest with a Staff, and makes Po
*Urban* speak these Verses to the Abb

*Cæsaris ob sceptrum baculum tibi porrigo dextrum,*
*Quo bene sis fretus, plus Cæsare dat tibi Petrus.*

But the Monks soon learnt by exp
rience, that the Popes Pastoral Staff d
not defend them like the Royal *Batt*
And therefore the Author of that Chr
nicle (2) deplores the misery to whic
his Monastery was reduced at that time
and regrets the loss it sustained, in be
ing

(1) *Grimaldus primus ab Urbano in Abbatem consecratus, baculum pastoralem in loco Sceptri regalis quod Antecessores sui & ipse ex dono Imperatoris in dextera portabant suscepit.*

(2) *Abbatia quæ hactenus fuit Imperialis camera, modo datur pro pretio, sicut à mercatoribus venditur vilis ancillula. Ubi sunt fastus regales? ubi Sceptri magnificentia?*

ing no longer protected by the Emperours.

I mention this, to ſhew how little power the Popes had before that time in the Elections of Biſhops and Abbots, and that it was wholly in the hands of Princes. However the Monks got always theſe words put into the Immunities or Priviledges, that Princes granted them; *That they ſhould have liberty to chuſe an Abbot of their Society according to the Inſtitution of St.* Benet. Yet after all, they durſt not chuſe any Abbot, but with conſent of the ſame Princes, who named to them moſt commonly, thoſe who were to be choſen, not obſerving even the order, which appointed the Abbot always to be taken of the houſe whereof he was to be Abbot. Liberty of Election remained only in inconſiderable Abbeys, and even there, in the beginning, the permiſſion of the Biſhop in whoſe Dioceſe it lay, was neceſſary. Before the Inſtitution of St. *Benet*, the Monks were in all things Subject to the Biſhops, and could do nothing without their conſent. But the clauſe of that Inſtitution concerning the Election of Abbots, which is to be made

The Elections were only free in name.

made by the Monks of the Community ſerved them for a Pretext, by degrees to exempt themſelves from the Juriſdiction of Biſhops. It is true that Monks who depended on Biſhops, even for the obſervation of their Inſtitution, could not chuſe a new Abbot, before they had obtained the permiſſion of their Biſhops. But as they repreſented their Rule, they were not hindered to follow it; and ſo they obtained from the Biſhops power to chuſe their Abbot according to the tenour of their Conſtitutions. There was no need afterward to have recourſe to Biſhops for a new Election, for they themſelves left to the Abbot and Monks all that concerned their Rule, and they began to make a difference betwixt the Juriſdiction of the Biſhops, and the Monaſtick diſcipline. The Monks went even a little farther, and obtained from their Biſhops exemptions from epiſcopal Juriſdiction. And ſo ſoon as the Popes had in the Dioceſes of other Biſhops, got the power which they have at preſent, the Authority of Biſhops was greatly diminiſhed. For the Popes granted to Monks, moſt commonly for Money,

Original of the Exemptions of Monaſteries.

as many exemptions as they pleased. We must, however, take notice, that the Primitive Exemptions of Monks are not so large, as those of later times, and that the more the Authority of Popes has been advanced, the Priviledges of Monks have encreased proportionably. After all, these Exemptions have been very advantageous to Monasteries, and very uneasy to Church-men that depended on them. For, seeing the Abbots had all power in Spirituals as well as in Temporals, the debates which they had with Church-men were always decided in favour of the Monastery.

Besides, the Abbots most commonly compounded with those to whom they gave the administration of Churches, and cut off part of their Stipend for the use of the Monastery. And for the better succeeding in this, they pretended that their Monastery had the right of a Baptismal Church, and by consequent the Tithes and other Church Dues belonged to it. If the Priests objected that they had always received the Tithes, and that therefore their Church ought to be accounted Baptismal; then

the Monks defended themselves other ways, affirming that the Priests only enjoyed the Tithes, by the charitable benevolence of their Abbots, & that by right they belonged to the Monastery. Thus the Monks of the Abbey of *Mire* heretofore pretended, that the Tithes of the Churches which depended on their Monastery, belonged to them. I shall here relate the terms inserted in the Acts of the Foundation of that Abbey that every one may Judge of the right that Monasteries have often usurped over Churches that depended on them, without any title. (1) *De decimis vero, quas clerici antea hîc à nostris agris accipiebant, ... dendum est antecessoribus nostris hoc ... tius pro charitate, vel ad solatium vitæ ... quam pro justitia & subditione sanxis... & in potestate abbatis est, utrum velit ... dare, aut sibimet habere, admoniti... sunt à modo omnes qui secesserint huc ... habitandum, ne unquam consentiant ... clericus curam ab Episcopo, sed Abbat... accipiat, quod istud monasterium est mat... Ecclesiæ.* To which may be added that the Abbots gave frequently enough the Government of Churches to some of their Monks, who discharged the Offic...

A difference betwixt the Monks and Curats about Tithes.

(1) *The Act of the foundation of the Abbey of* Mire.

Office of Curate, inſtead of ſecular Prieſts; and then it was eaſy to attribute to the Monaſtery, the Tithes which belonged to the Curates. There was, indeed, ſometimes debates betwixt the Biſhops and Monks; but the Biſhops were eaſily gained by money, to ſuffer them to appoint Vicars or Curates in the Churches, which they pretended did depend on their Monaſteries.

That we may better underſtand the Cuſtom of that time, it is to be obſerved, that *Gregory* VII. and other ſucceeding Popes, made ſeveral Conſtitutions to oblige Laicks to reſtore to the Church the Tithes and other Eccleſiaſtical Revenues, which they poſſeſſed; but moſt of theſe Reſtitutions were only made to Cathedral Churches and Monaſteries, though the goods belonged to private Churches. Now ſeeing the Church at that time was diſtinguiſhed from the Altar, Monaſteries retained the Churches, that is to ſay, the Lands, Tithes and other Revenues: But becauſe the right of providing theſe Altars, belonged to the Biſhops, it behoved the Monks to obtain from them; that which was called, (1) the Redemption of Altars. *Godefroi*

A diſtinction betwixt the Church and the Altar.

(1) *Altarium redemptio.*

of *Vendôme*, and other Authors of the same Age, make mention of that right. Besides, the Council of *Clairmont* ordained, *That the Altars which had been given to Chapters or Monasteries by the Vicars, whom they called Tarions, should return to the Power of the Bishop, unless the Bishops had confirmed in writing the Donation made to the Chapters and Monasteries.* To obtain this confirmation from the Bishop, a certain sum of money was required. And this abuse caused another; for private men would also have Churches, of which they received the Profits in imitation of the Canons and Monks, and had the cure supplied by Vicars. There was no necessity that they who were provided with such Altars should be Priests, seeing they substituted Vicars in their places. *John of Salisbury* condemns that abuse (1) and cannot endure that those that did not wait at the Altar should partake with the Altar, applying to themselves the Revenues of Churches, without rendring any service to the same Churches. *Ives* Bishop of *Chartres* complains likewise of that corruption, in a Letter to Pope *Urban* II. wherein he lays open the bad

(1) *Nolunt Sacerdotio onerari, aut servire altaribus de altario vivunt, sed personatus quosdam introduxerunt, quorum jure ad alium onera, ad alium reverunter emolumenta.*

Custom

Cuſtom that was in *France*, in reſpect of ſuch Perſonages which had been authoriſed by the Biſhops his Predeceſſors: *Qui altari non ſerviunt*, ſays he, *de altari vivunt, à quo ſacrilegio cum eos abſterrere velim, monendo, increpando, excommunicando, altaria à me redimere volunt ſub nomine perſonæ, ſicut a predeceſſoribus meis ex prava conſuetudine redemerunt.*

Pope *Urban*, indeed, condemned that abuſe in a Council held at *Clairmont*, to hinder the Simony that Biſhops committed in ſelling Altars: but it ſeems that they who had bought them from the Biſhops, gained by their Simony; for it was decreed in that Council, that ſuch as had for the ſpace of thirty years enjoyed theſe Altars, ſhould not be moleſted for the future, and that the Biſhops ſhould exact no more from them, but the due, which they called *redemptio altarium*. Pope *Paſcal* Succeſſor to *Urban*, confirmed the ſame Decree in one of his Epiſtles, to *Yves* Biſhop of *Chartres*, and *Ranulphus* Biſhop of *Xantes*, wherein he ſpeaks to them in theſe terms: *Ipſi Arvernenſi concilio adfuiſtis, in quo præſidente Præ-*

*decessore nostro bonæ memoriæ Papâ Urbano, consentientibus Galliarum Episcopis, decretum est ut altaria quæ ab annis triginta sub vicariorum redemptione Monasteria possedisse noscuntur, quietè deinceps & sine molestiâ qualibet Monasteriis ipsis firma permaneant.*

In this manner did Monasteries and Chapters, who were also comprehended in the Decree of the Council of *Clairmont*, retain to perpetuity several Altars which did not all belong to them; and they were at the same time exempted from paying to the Bishops the usual dues, that were paid after the death of the Vicars; for obtaining liberty to put other Vicars in their places. It had been, me thinks, more convenient and agreeable to the Ancient Canons, to have left the power of providing for Altars to the Bishops. And to prove that that right belonged to them, when Laicks were forced to restore to the Church the Tithes and other Church Revenues which they possessed, it was decreed in the Council of *Melfi* under Pope *Urban* II. *That no Laick should have Liberty to give to Monasteries or Chapters, Tithes Churches, or other Ecclesiastical*

*Eccleſiaſtical Rights, without the conſent of the Biſhop of the place, or the permiſſion of the Pope.* But it happened that the Biſhops abuſed their Power, and permitted Chapters and Monaſteries to receive theſe Rights from Laicks, on Condition of a certain ſum of money to be paid to the Biſhops, for granting Liberty of eſtabliſhing Prieſts or Vicars who might take upon them the Spiritual care of Churches. Theſe decrees of the Popes that were backed with Excommunications, frightned many Laicks, who inſtead of reſtoring the Church Revenues to private Churches, to which they belonged, reſtored them to Chapters and Monaſteries, with the permiſſion of the Biſhops. The Lay-men liked it much better to reſtore the Tithes, and other Eccleſiaſtical Revenues, to Chapters and Monaſteries, from whom they got money, than to private Churches, which had none to give. And therefore Councils decreed that theſe Reſtitutions ſhould not be made without conſent of the Biſhops, thereby to prevent all compacts or agreements betwixt Laicks and Eccleſiaſtical Communities. There were,

nevertheleſs, a great many Laicks, who were not ſtartled at the Excommunications of *Gregory* VII. and other ſucceeding Popes, but notwithſtanding them kept ſtill the Tithes and other Eccleſiaſtical Revenues. They did more, for they inſtituted Prieſts to take care of Souls, without expecting the Inſtitution of the Biſhops. And that was the cauſe why the Council of *Lateran* under *Alexander* III. decreed (1) *That Clerks or Prieſts that ſhould take upon them the Government of Churches, from the hands of Laicks without the Authority of the Biſhop of the place, ſhould be excommunicated; and that if they perſiſted, they ſhould be depoſed from their Miniſtry.* Nevertheleſs the Popes ſuffered Lay-men ſtill to enjoy the Tithes of Churches whereof they were in poſſeſſion. But they granted Chapters and Monaſteries Priviledges to get them out of their hands, even when the Biſhops would not conſent to it. Theſe kinds of Priviledges which were eaſily obtained from the Court of *Rome*, brought in great Revenues to Chapters and Monaſteries, who put Secular Prieſts into the Government of Churches,

(1) *Con. Later. III. cap. 14.*

Churches, allowing them ſuch moderate Stipends, that the Popes were obliged to condemn that Avarice of the Canons and Monks, who denied Prieſts even a neceſſary ſubſiſtence.

The vaſt Rents that Monaſteries enjoyed gave umbrage to the Biſhops, Canons, and to Princes themſelves, to whom it was repreſented, that moſt part of theſe Revenues ought rather to belong to ſecular Prieſts who ſerved the cures, than to Monks, who by their Profeſſion were excluded from all Eccleſiaſtical Functions But ſeeing the Monks had taken advantage of the ignorance of Secular Prieſts, and that the government of moſt Churches was committed to them, it was a difficult task to turn them out, and to re-eſtabliſh Secular Prieſts in Churches. And therefore there happened great conteſts betwixt the Canons and Monks, eſpecially in *England*, where the Monks had deprived the Canons of their Canonſhips, and even obliged Secular Prieſts to turn Monks, if they intended to enjoy their Benefices. The Biſhops did what lay in their power to remove the Monks from Church Dignities. But on the other

other hand the Monks had their recourse to the Popes, who were already become Masters of a great part of the Jurisdiction of Bishops; and Princes who were perswaded that Monasteries were grown too Rich, favoured the Bishops against the Monks and Popes. All the Arch-Bishops of *Canterbury* had been Monks, from the time of *Austin*, whom Pope *Gregory* sent into *England*, until the Reign of *Henry* 1. But when under that Prince, they came to the Election of an Arch-Bishop, (1) all the Bishops of *England* declared publickly, that they would have no Monk for their Primate, and that amongst the Clergy there were as virtuous men, and as fit for the Government of a Church, as any in the Monasteries: So by degrees they began to take the Government of Churches out of the hands of Monks, though they were protected by the Popes. Yet they still made a distinction betwixt Regular Canons and Monks, which continues to this day; for we find but a few Monks that take the Charge of Parish-Churches, and perform other Ecclesiastical Functions out of their Monasteries.

Hist. *Sim. Dunel.* 1123.

Whereas

Whereas regular Canons in all places diſcharge thoſe Offices, without being obliged, as Monks are, to put Secular Prieſts into their Cures.

There remain at preſent but few Cathedral Churches in the hands of Monks, though heretofore it was a very common thing to ſee no other Canons, in Churches, but Monks, who at the ſame time took care both of Churches and Monaſteries; which was altogether oppoſit to the Canons, & even to the Inſtitution of the Monaſtick life. (1) St. *Gregory* indeed, allows Monks to enter into holy Orders, and to officiate in that capacity, when it ſhall pleaſe their Biſhop to enjoyn them: But then they could no longer continue in their Monaſteries, being become real Clerks. Nevertheleſs the Monks did the contrary, and remaining ſtill in their Monaſteries, took upon them the care of Churches. We even find in the Hiſtory of *England*, that the Office of Archdeacon of a Cathedral Church was annexed to the place of Prior of a Monaſtery. The deſire they had of enriching their Houſes, was the true cauſe why they continued in their Communities though by right they were ſeparated from

Eccleſiaſtical Employments inconſiſtent with Monks.

(1) *Quiſquis autem ex Monaſterio ad Eccleſiaſticum ordinem pervenerit, ulterius illic nec aliquam poteſtatem, nec licentiam habeat manendi.*

Greg. Papa.

from them, because of the Ecclesiastical Employments in which they were engaged; and so far from laying aside their Monkish customs, when they were associated to the Clergy, they introduced into their Churches the Practices and Ceremonies of their Monasteries; and that was the thing that made way for the Re-establishment of Secular Priests, in Cathedral Churches and other Benefices. But nevertheless, part of the Revenues that belonged to Private Churches remained still in the possession of Monasteries.

Besides, Princes and Bishops could not endure that Monks should possess Ecclesiastical Dignities, after that the Popes were grown so powerful that they disposed at their pleasure of the most part of Benefices. For the Monks always espoused the Interests of the Popes against Princes and Bishops, under pretext of defending the liberty of the Church; and seeing Princes refused to submit to the Pope, with whom they had continual quarrels, they resolved to give no Ecclesiastical Promotions, but to those who were devoted to their Service. The English History gives us

a

a pretty Inſtance of this, in the Reign of *Richard* I. That Prince having aſſembled the Biſhops of his Kingdom, could not forbear with Tears to tell them, that he was an unfortunate wretch, and no King. (1) He complained that the Revenues of his Kingdom were crumbled into infinite parcels, of which the leaſt part came to his ſhare, and (2) that they were poſſeſſed by Black Monks, White Monks, & Canons of different Orders. Thenhe upbraided the Secular Prieſts with their Vices, and ſcandalous & debauched lives that were notoriouſly known to all the World. *Eleemoſynas Populi*, ſaid that Prince ſpeaking of Secular Prieſts, *diſtrahunt, & expendunt in pravos uſus, dum magis cogitant de ſuarum pannis meretricum, quàm de ſuarum veſtimentis vel libris Eccleſiarum — tolerabile malum videretur, ſi ſinguli ſuas mulierculas obſervarent, & ſaltem thorum non invaderent alienum.*

Princes ruine the Monks.

(1) *Se miſerum eſſe, non regem. Chron. Gervaſii.*

(2) *Hæc enim & illa poſſident albi Monachi & nigri, & ordinis diverſi Canonici.*

Theſe corruptions were not peculiar to *England* alone, but were ſpread over all the Churches of *Europe*, where Prieſts who were prohibited to Marry according to the Canons of the Weſtern Church

Church, made no ſcruple publickly t keep Concubines. And we are obliged to the Monks, for the ſervices they rendred to the Church, in thoſe days when the Secular Prieſts were plunged in Ignorance and Vice: But their Services were not ſo conſiderable, when they began to declare for the Pope, who pretended alone to have the abſolute diſpoſal of all Church Revenues contrary to Ancient Cuſtom. King *Richard*, of whom we have been ſpeaking attributes the diſorders which the Court of *Rome* cauſed in his dominions to the weakneſs of the Prieſts of his Kingdom. *Romani* ſays he, *Propter debilitatem veſtram, adeo nobis infeſti ſunt, ut nobis ſolummodo videantur imperare, literulas ſuas nobis vendunt, nec Juſtitiam quærunt, ſed litigia fovent, multiplicant appellationes, redimunt placitantes et cum ſolam pecuniam appetunt, veritatem confunduut pacemque ſubvertunt.* That Prince continuing his complaints, told the Biſhops of the ſame aſſembly, that for Remedy to all theſe evils, the Monks muſt be obliged to ſhut themſelves up within their Monaſteries; without ſharing in Eccleſiaſtical affairs; and the

theSecular Clergy reformed, who would be much more ſerviceable than the Monks (1) in reſiſting the unjuſt attempts of the Court of *Rome*. The Kings advice was followed by all the Biſhops, and it was reſolved in that Aſſembly, that the Monks who poſſeſſed Cathedral Churches, ſhould have their private Churches near to theſe Cathedrals, and that Secular Canons ſhould be ſettled in their places. And in this manner did Princes with aſſiſtance of the Biſhops endeavour to re-eſtabliſh Secular Prieſts in the Churches according to Preſcripts of the Canon Law. But that was not done without great difficulty, becauſe the Monks were protected by the Popes, whoſe authority was become formidable; and it is to that time eſpecially, that we ought to attribute a great part of the Exemptions which the Monks obtained from *Rome*, that they might not depend on the Biſhops who endeavoured their Ruine.

(1) *Romanis latronibus ſi tranſgrediuntur, poterunt obeſſe.*

The Original of great power given to Churches.

It was a troubleſom thing to Princes, to ſee the Popes diſpoſe at their pleaſure of the goods and Lands, which Kings their Predeceſſours had given to Churches,

Churches, at that time when they had the power over them. It is certain Princes would never have granted such large Revenues to Churches, if they had thought that they should have fallen into the hands of the Popes. For, to what end was it to give to Churches whole Towns, and great Demains, with secular Jurisdiction, when the same was not to be in their disposal for the future? The *German* Historians attribute chiefly to the Emperours *Otho*'s the enriching the Bishops and Monasteries of *Germany* with so great Revenues (1) *Otho primus omnibus penè Cathedralibus Ecclesiis in Italia, Gallia, Germania, Burgundia et Lotharingia constitutis, multas civitates, castra, oppida, villas, & multa alia dominia temporalia, & Jurisdictiones donavit, atque illis omnibus Ecclesiis propria insignia perpetuo deputavit. Archiepiscopos quoque & episcopos ducatibus, comitatibus & baroniis communivit, quibus nobiles & potentes vasallos subjecit, ut semper essent ad resistendum & manu forti contra Hæreticis, &c.* That does not altogether agree with the reflexions that Father (2) *Paul* hath made in his History, where he pretends that the

(1) *Theodor. de Niem. priv. & Jur. Imper.*

he Biſhops of *Germany*, during the Wars that were betwixt the Emperours nd Popes, had uſurped the *Lands* vhich at preſent they enjoy with the Titles of Peers, Marqueſſes and Counts. Though that may indeed be true of ſome, et it cannot be generally affirmed of ll; for the Records of thoſe Churches vince the contrary. Nevertheleſs the itles which they produce ought to be vell examined, becauſe many of them re falſe. Seeing Biſhops and Abbots vere at that time employed in the reateſt affairs of State, it was eaſy for hem to obtain what they deſired of rinces: Beſides that, they being more apable of buſineſs than Laicks, the ſame rinces confided much in them. But heſe great Revenues wherewith Churches have been enriched, have nly ſerved to kindle War betwixt opes and Princes, every one pretending o have a particular right over Eccleſiſtical Revenues. And that divided the uthors of theſe times, ſome writing in avour of the rights pretended by rinces, and others in favour of the opes. And it is no eaſy matter at preſent to reconcile together the rights of thoſe two Powers.

The Authority of the Pope concerning Benefices.

No man can deny, but that the Pope Bishop or Metropolitan of *Rome*, P triarch of the West, and Head of t Church. I shall not now examine by wh Right, Divine or Positive, these ti belong to him; for that is a Questi of Divinity rather than History. I moreover certain that the Pope hath all these Qualities in vain, and that very one ought to enjoy some rights t are peculiar to him. It is not question but that in quality of Bishop of *Ro* he may dispose of the Benefices wit his Dioceſe. It remains then only to inquired into, whether he can in qual of Patriarch of the West, and Head the Church, by right provide for all t Benefices or Ecclesiastical Dignities all Christendom. If we consult the m ter of fact, it is of publick Notorie that the Church of *Rome* hath not h any Priviledge as to that, above oth Churches. Every one took care of pr viding what Ministers they want without having recourse to *Rome*; an when difficulties arose, they were a justed in Provincial Synods. No m ever wrote before the Establishment

the new Law, that the Biſhop of *Rome* alone in quality of the Succeſſor of St. *Peter*, had all Eccleſiaſtical Juriſdiction, and that other Biſhops were only his Vicars, or Delegates. Popes, nevertheleſs, do at preſent pretend that their Authority in reſpect of Eccleſiaſtical Revenues is founded on Divine Right, and that becauſe they had not for many ages enjoyed it, it ought not to be inferred that they had no Right to it. A Divine Right, ſay they, being eſſentially inherent in the Perſon of the Pope, can never preſcribe: And it is a bad conſequence to ſay, that Popes have no Right, becauſe they have not for a long time enjoyed it, nor do at preſent enjoy it in its full extent. Men are ſometimes obliged not to make uſe of their Right, or to remit part of it for Peace ſake. Laws in their rigour are ſometimes prejudicial to the repoſe of the Church, and in that caſe, mild ways, ſuitable to the times, are to be followed. And therefore (1) Pope *Innocent* III. affirms in one of his Epiſtles, that the Tranſlations of Biſhops and other changes of Sees belong by Right to the Church of *Rome*; that Popes

(1) *Innoc. III. de tranſlat. Epiſc. tit. 7. cap. 1.*

enjoy that Priviledge in Quality of th
Succeſſours of St. *Peter*; and that in th
Quality they are above all the Cano
Law. So that according to his Logick
we ought not ſo much to conſider wh
is decreed by the Canons, as wh
is Commanded by Popes, on whom t
ſame Canons depend; becauſe accor
to his Principle, all the Canon La
derives its force and Authority from t
Primacy of St. *Peter*.

Pope *Innocent*, who laid down th
Maxim in favour of his See, knew, for
that, that all the Ancient Canon La
is contrary to it, and that the Electio
Tranſlations, Demiſſions or Reſigna
ons of Biſhops, were made in Provinc
Synods, and beſides, that Princes ha
had a great ſhare in all thoſe matte
within their own Kingdoms. For i
ſtance the Practice of the Church
*France* under the firſt Race of the
Kings, was very far different from th
pretended Divine Right mentioned i
the compilation of the Decretals: Fo
we find that the Kings by themſelves
called Councils for affairs of that nature
and that (1) in the greateſt cauſes, ſuch
as the depoſing of Biſhops, they nam-

(1) *Gregor. Turon. lib. 5. cap. 20, 27.*

ed for Judges what Biſhops they pleaſed within their Kingdom. In a word, Kings and the Biſhops of places handled in Councils, the affairs which the Popes now a days pretend to belong to them by Divine Right. It is true, under the Second Race of the *French Kings*, the Authority of the Popes was greater in *France*; But it was ſtill limited by the Princes, without whoſe conſent they could do nothing, even in the cauſes, which are called the greater, and whereof the deciſion ſeemed to be reſerved to the Popes. As to matters of ſmaller importance, the Biſhops had the abſolute power over them, and the whole diſpoſition of Benefices depended on them. The Popes had never dreamt of the right which is now eſtabliſhed, if private men who diſputed one with another about the validity of their Elections, had not had their recourſe to the chief See for deciſion of their Controverſies. We find ſtill in the Eleventh Century, inſtances of the power of Provincial Councils, who received Reſignations or Demiſſions made by Biſhops, and admitted Tranſlations from one See to another, without having recourſe

to the Pope for it. And there is nothing more novel than the provisions of Bishopricks in the manner they are made at present by the Popes Bulls which confirm the Elections in those places where they are still in force, or the nominations of Princes who enjoy that Right. But since private Persons have given occasion to the establishment of the New Law, it hath not been difficult for Canonists to defend it.

To make it out, that the Pope is Master of all Benefices, they say that he is the Collatour of Collatours, and the Ordinary of Ordinaries, not only in the Western Church, whereof he is Patriarch, but also over the whole World, because he is the Patriarch of Patriarchs, and Chief of the Universal Church. They farther add, that the Church of *Rome* hath founded all other Churches; and by consequent, can dispose of them as Founder and Patron. It is certain that the Patriarchs of *Alexandria* and *Antioch* ordained the Bishops that were within the extent of their Patriarchship, and that the Pope did the same in regard of the Bishops who

who are in the Regions which were called *Suburbican*. On the other ſide the Canoniſts prove by the Teſtimonies of St. *Leo*, St. *Gregory* and of ſome other Fathers, that St. *Peter* founded the Churches of *Antioch*, *Alexandria* and *Rome*, which are the three chief Patriarchal Churches from which the others have ſprung.

And this is the ground upon which the Canoniſts pretend that the Pope hath the diſpoſal of all the Churches in the World. They are nevertheleſs obliged to confeſs that that Right was unknown to the Ancients, and that it is no where contained but in the Book of the Decretals. Nay I dare be bold to affirm that the Decretals contain but part of that new right whereof the Pope is at preſent in Poſſeſſion, and that ſince the Collection of the Decretals, the Court of *Rome* hath made many diſcoveries in Beneficiary matters, of which I ſhall not ſpeak in this place. It ſhall be enough for me to obſerve here, that nothing is eſteemed at *Rome*, but the preſent Maxims; that the Decrees of *Gratian* are not valued there, becauſe they contain for moſt part nothing but

Old Customs, which are out of Doors, and that the Books of Decretals are no received neither, but so far as they sui with the present times. The great Prin ciple of the Court of *Rome* is, that th Pope is above the Laws, that it belong to him alone to make Canons for th Government of the Church, and tha it is in his power to change the Anc ent; and to introduce New ones, accord ing to the necessity of times, places an occasions. If it happen that Princes op pose the Execution of their Bulls, the easily take up the matter by *Concordat* or other means, without any prejudic at all to their pretensions; because a they say, there are two sorts of Laws to wit, *jus strictum*, otherways the Law of rigour, which for most part cannot be put in Execution; and *jus remissum*, which is a Law somewhat favourable and remiss, which may be also called the Law of Oeconomy and Prudence, which the Church hath often made use of, to comply with the humour of those with whom she hath had to do.

The Popes are always on that lock with Princes, and what they cannot ob tain at one time, they hope to obtain on another

another occaſion. On this Maxim are founded all the *Concordats*, and other Accommodations which they have made with ſeveral Princes. And therefore the Arguments which (1) Father *Paul* draws from the nature of *Concordats*, to prove that Popes have not by right an abſolute Power over the Revenues of the Church, are not altogether concluſive; becauſe Popes will pretend that theſe *Concordats*, are only made by Proviſion, and for a time, till they be able to exerciſe their right in its full extent. That hath been a very advantageous Maxim to the Court of *Rome*, which hath obtained at one time, what was impoſſible to be obtained at another. They indeed propoſe matters according to the rigour, and their pretenſions; but they ſuffer Princes to moderate them according to the Cuſtoms received in their Kingdoms. And that is the reaſon why ſeveral of the Popes Bulls are not received in *France*, and that they are not regiſtred, till firſt they be examined, to ſee whether they contain any thing contrary to the Liberties of the *Gallican* Church. Beſides, they are not regiſtred but with certain Clauſes

(1) *P. Paolo tratt. delle mat. benef.*

The Cuſtom of *France* in the reception of Bulls.

Clauſes and Modifications, that they may be made agreeable to the Cuſtoms of the Countrey; whereas at *Rome* they are regiſtred in their full extent, and without any reſtrictions. The *Spaniards* do the ſame alſo, but with leſs noiſe than the *French* do. They receive all the Popes Bulls with great reſpect, then they examine them in Council, and if they find that there is reaſon not to put them in Execution, they inform the Holy Father of it by a ſupplication, and ſo the Bulls remain without effect.

Though Popes have done all that lay in their power, to get the abſolute diſpoſal of the Revenues of all the Churches in the World, they could never as yet hinder Princes from taking to themſelves certain Rights or Priviledges, which they enjoy at preſent. Theſe Rights differ according to the diverſity of Countreys; but I ſhall only treat in this place of the Rights of the *Regale*, of which the Kings of *France* are in Poſſeſſion. Many pretend that the Right of the *Regale* is as Ancient as the Crown of *France*: But that cannot be, if we conſider that Right as it is eſtabliſhed

Of the Right of the *Regale*.

bliſhed at preſent. For it comprehends not only the Collation of Benefices which have no Cure of Souls, for which the King provides by his abſolute power, during the vacancy of the Epiſcopal See; but beſides that, the King hath the Adminiſtration and diſpoſal of all the Revenues of the Biſhoprick, until the See be filled. Now it is certain, that under the firſt Race of the *French* Kings, the Rents and Profits of Vacant Churches were managed by the Clergy and Arch-deacon, as appears by the Council of *Orleans*, held under King *Childebert*, and by the Council of *Paris*, held under King *Clotair* II. where it is decreed, (1) *That the goods of the Biſhop deceaſed, ſhall be defended and preſerved entire by the Arch-deacon and Clergy; and that they who ſhall dare to ſeize or uſurp them, ſhall be Excommunicated.*

(1) Councils of *Orleans* and *Paris*. *Ab Archidiacono & clero in omnibus defenſentur & conſerventur, quod ſi quis auſu temerario res ipſas ingreſſus fuerit, & ab dominatione Eccleſiæ abſtulerit, ut necator pauperum communione privetur.*

At that time the *Gallican* Church obſerved the Canons of the Council of *Calcedon* concerning the Stewards or Treaſurers, who were to take the care of the Revenues of the Church after the death of the Biſhop. In ſome Churches the Archdeacons ſupplied the place of Stewards.

Stewards. But in what manner ſoever that was performed, whether by Stewards, or Archdeacons, it is ſtill true that Princes took no ſhare in the Fruits of vacant Biſhopricks, ſince one part of them were employed for the occaſions of the Church, and the other preſerved for the ſucceeding Biſhop. It cannot then be affirmed, that in that reſpect the Right of the *Regale* hath been in uſe under the firſt Race of the Kings of *France*, unleſs one would confound this Right with that of Nomination to Biſhopricks, which the Kings of the firſt Race enjoyed. But by the Word *Regale*, is meant now a days ſomewhat quite different from a bare Nomination: For the *Regale* at preſent attributes to the King, the Spiritual and Temporal Fruits of Vacant Biſhopricks, until the time they be provided; which differs from the Ancient Rights of Nomination and Inveſtiture.

Of the *Regale* under the ſecond Race.

Furthermore, the ſame Right of the *Regale*, in the notion we take it here, was alſo unknown under the ſecond Race of the *French* Kings, as appears by a Letter of *Hincmar* Archbiſhop of *Rheims*, written to *Charles* the *Bald*, For

For that Archbiſhop ſets down the Canon of the Council of *Calcedon*, for a Rule during the Vacancy of the Epiſcopal See: *ut poſt mortem Epiſcopi reditus Eccleſiæ viduatæ futuro Epiſcopo penes Oeconomum ejuſdem Eccleſiæ integræ conſervari jubeantur.* And in a (1) Synod held under the ſame Emperour, it was appointed according to what had been decreed in the Council of *Calcedon*, that after the Deceaſe of the Biſhop, the Rents ſhould be preſerved for his Succeſſor by the Steward or Treaſurer of the Church. It is true, *Charles* the *Bald* acted otherwiſe, after that *Ebbo* Archbiſhop of *Rheims* was depoſed from his See: For during the Vacancy of the See, which continued ſeveral years, that Prince ſeized the Rents of the Church, and gave part of the Lands thereof in Fee. But that Inſtance does not overthrow the practice of thoſe Times, ſeeing the King promiſed in the (2) Synod of *Beauvais* to *Hincmar*, and the other Biſhops, that he would reſtore to the Church of *Rheims*, all the Lands that he had taken from it: Beſides, that was a ſingular Act, and only done by the King, for a greater puniſhment to Arch-

(1) *Ann.* 876. *Synod. Pontigon.*

(2) *Ann.* 845.

Archbishop *Ebbo*, who had been deposed. Nor can the Right of the *Regale* be proved by the bad use that *Charles Martel* made of Church-Lands, which he gave in Fee to Laicks; for the Capitularies of *Charlemain* of *Louis*, and *Charles* the *Bald* condemn that Dissipation of Church-Revenues, and attribute it to the necessity of the Times, which in some manner obliged Princes to give Church-Lands to their Subjects, thereby to endear them to their Service.

The *Regale* under the third Race.

In fine, the same Right of the *Regale*, as we understand it, was not yet fixt in the beginning of the third Race, as appears by a Letter of *Gerbert* Archbishop of *Rheims*, wherein he recommends it to the Clergy and People, to whom he directs his Letter, to take care that the Estate of the Bishop deceased be preserved for the succeeding Bishop: *Sit vestra pervigil cura, ut secundum divinas & humanas leges, res defuncti Episcopi, tam mobiles quàm immobiles, futuro reserventur Episcopo.*

The Regale different from the Investiture.

We must not, neither, confound the Right of Investiture, with the Right of the *Regale*, as some Authors have done.

done. For it is not to be found in Hiſtory, nor in any Ancient Deed, that Emperours and Kings, who have had the Inveſtitures of Biſhopricks and Abbeys, have therefore enjoyed the Revenues of Churches, during the Vacancy of the See: but application was only made to them for proceeding to a new Election, which was not to be made without their conſent; afterward they gave to Biſhopricks and Monaſteries, the Inveſtiture of Lands or Fiefs which had been left to them; in the manner as we have before deſcribed.

An Explication of the Inveſtiture.

Before the Popes diſputed the Right of Inveſtiture with Princes, and claimed the Power over Elections, the Inveſtiture contained nothing of the Spiritual, but only Temporal Rights, in reſpect of Lands & Fees in which Biſhopricks and Monaſteries were inveſted, and the Biſhops had full liberty to give the Conſecration wherein the Spiritual conſiſted. If Popes had not had a deſign to take from Princes the Right which they had in Elections, they had never thought of reckoning the Inveſtiture among Spiritual things. There is nothing

thing worse grounded, than that distinction of Investiture which is mentioned in the Agreement that was made betwixt Pope *Calixtus* II. and the Emperour *Henry* IV. The Pope grants to *Henry*, that all Elections of Bishops and Abbots, shall be made in his presence, thereby to prevent disorder; and that those who should be elected, should receive from the Emperour, the *Regales* or *Regalities* by the Scepter. *Henry* the Emperour at the same time obliges himself, not to give Investitures by the Ring and Staff or Baton, and allows the Liberty of Elections. But that distinction of Investitures given by the Pastoral Staff, and by the Scepter, as if the first had been a thing Spiritual, and the other meerly Temporal, has no ground in the World. Investitures were barely given by the Staff and Ring, whether that Staff was called, Royal or Pastoral. *Simony* consisted not in the form of Investiture, but in the Emperours taking of Money, from those to whom they gave it; and since that was always done before the Election, it might be said that the Election was Simoniacal. That abuse ought to have been

been corrected, and matters left as they were before.

In the mean while, it is very probable, that the Agreement made betwixt Pope *Calixtus* and *Henry* the Emperour, is the true Original of the *Regale*: For in theſe two Inſtruments there is mention made of the *Regale*: (1) *Electus autem Regalia per ſceptrum à te recipiat*, is the Popes Declaration to the Emperour bears. That word *Regalia* comprehended the Sees which Princes had granted to Churches; afterward it was extended to all the Revenues that were poſſeſſed by the ſame Churches. Now according to the Laws of the *German* Emperours, it was the nature of Fees, that they who enjoyed them, became Vaſſals to the Emperors of whom they held them; and were obliged to take an Oath of Allegiance to them. Moreover, after the Death of the Vaſſal, the Emperour enjoyed his Revenues, until his Succeſſor being inveſted in the ſame Fees, had ſworn to him Fealty and Homage. That Law reached Churchmen, becauſe their Churches poſſeſſed ſeveral Fees: And it is the preſent Cuſtom of *France*, that the *Regale* be-

The *Regale* granted by the Pope.

(1) *Ann.* 1122.

A more particular Explication of the *Regale*.

gins so soon as the Church is Vacant and does not end, till the new Bishop hath sworn Allegiance to the King and be admitted by Law. *Louis the*

(1) *Ann.* 1161. *Young* is the first King of *France* (1) who hath made mention of this Right of the *Regale*: For speaking of the Bishoprick of *Paris*, he uses these words: *Episcopatus & Regale in manus nostras venit.* There is mention also made of

(2) *Ann.* 1190. it (2) in the last Will and Testament of *Philip the August*, wherein the Prince saith: *Nos verò, tam canonicas quàm monachos monemus, ut talem pastorem eligant, qui deo placeat & utilis sit regno. Regina autem & Archiepiscopus tamdiu Regalia in manu sua teneant, donec electus consecratus sit vel benedictus; & tunc Regalia sine contradictione ei reddantur.*

We find in the Histories of *England* that the Right of the *Regale* was established in that Kingdom, at the same time it was in *France*, and that it occasioned many troubles there. It proceeded even to the Churches of *Ireland*; and it appears by a Letter of Pope Innocent III. directed to a Cardinal, Legate in that Countrey, that the

Custom

Cuſtom of the *Regale*, was in the Church of *Armagh*; and the Pope in his Letter makes uſe of the Word *Regalia*. Nay he ſpeaks of that Right, as of a thing received and authoriſed by Cuſtom: And to hinder Princes from enjoying too long the Revenues of Churches, he ſhortens the time of the Vacancy of the See, ordering the Metropolitans remote from *Rome*, to enter into the Adminiſtration of their Churches, before they had obtained their confirmation: *Quia*, ſays that Pope, *ſi tanto tempore quo uſque poſſet Electus, confirmationem cum pallio à ſede Apoſtolicâ obtinere, Regalia non reciperet; Eccleſia quæ interim adminiſtratione careret, non modicum incurreret detrimentum.*

Many other Popes have alſo confirmed by Bulls, the ſame Right of the *Regale*, which the Kings of *France* enjoy. But the Emperour *Frederick* II. 1) made a Conſtitution againſt the *Regales*, as if they had been Contrary to the immunities of the Church, and 2) confirmed his firſt Conſtitution, by a Second which he addreſſed to Pope *Honorius* III. Theſe Conſtitutions are mentioned by *Goldaſtus* in the following

(1) *Ann.* 1215.

(2) *Ann.* 1215.

words: *Dimittimus & refutamus abusum quem in occupandis decedentium Prælatorum, aut etiam Ecclesiarum vacantium, nostri consueverunt Antecessores committere.* That Prince remits to the Pope and other Bishops, the Right which was called the *Regales*, as a Spiritual Right which belonged not to the Emperours.

(1) M. *de Marca*, produces also many Authorities of Popes and Councils, to prove that the Revenues of Vacant Churches in the *Gallican* Church, did not belong to Princes, and that the Decree of the Council of *Calcedon*, which appoints the Revenues to be kept for Successours should be observed there as well as in other Churches. Most of these proofs are to be found in the Decrees of *Gratian*, and thence it appears, that that abuse is very Ancient, and practised long before the *Regale* was established, and tolerated by Popes. Wherefore Councils prohibited Princes and other Laicks to invade the Goods and Revenues of Churchmen after their Death. That wicked Custom of seizing the Estates of Bishops so soon as they were dead, was spread over the whole Church: For we read that it was no less in use in the E-

(1 *Lib.* 8. *de concord. cap.* 18.

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than in the Weſt. (1) The Emperour *Manuel Comnenus* prohibited his Magiſtrats, to ſeize for his Exchequer the immoveable goods of Vacant Churches. (1) *Ann.* 1150.

(2) *Raymond* Count of *Barcelona*, made the ſame Prohibition alſo to his Officers: And to prevent the Revenues of Vacant Churches from being diſſipated, he himſelf took upon him the cuſtody of them, by an Authentick Declaration, which he made by way of Privileg to the Church of *Barcelona*; and that Privileg is not only extended to all the Profits of the Biſhoprick, even during the Life of the Biſhops, but to all the other Churches of the Province of *Tarragona*. The ſame Priviledges were alſo granted to the Church of *Narbonne*: But notwithſtanding that, Laicks ſtill continued to ſeize the Eſtates of Biſhops after their Death, and retained them under pretext of preſerving them, and hindring diſſipation. Nevertheleſs the Popes who vigorouſly oppoſed that uſurpation of the Laicks, ſeem at the ſame time to have approved the Right of the *Regale* which the Kings of *France* enjoyed in Relation (2) *Ann.* 1137.

to several Bishopricks of their King-
(1) Ann. 1238. dom. (1) Pope *Gregory* IX. in one
of his Epistles directed to the Arch-
bishop of *Narbonne*, and to the Bishop
of *Magalone* and *Elne*, complains that
the Stewards and Bailiffs of the King of
*France*, in the Province of *Narbonne*,
contrary to all right and reason, seiz-
ed the Revenues of Bishops, during the
Vacancy of the See: Then he adds
(2) *Quod nullo tempore prædecessoribus ipsius regis, vel aliis, occasione Regalium, vel alia extitit attentatum.* (2) that the Predecessors of the King
had never done it under pretext of the
*Regale*, or any other Right.

The Popes, as appears by the Letter
of *Gregory* IX. condemned not the
Right of the *Regale*, which the Kings of
*France* had in several Churches of their
Kingdom, as a matter of injustice and
usurpation; and the History of the Life
of St *Louis* informs us, that St. *Louis*
made no Scruple in imitation of his
Predecessors, to make use of it in those
places, where Custom had authorised
the same, wherefore the Kings of *France*
(2) *Tantum præscriptum, quantum possessum.* (2) have not extended that Right, but
to Churches where it was already esta-
blished. Heretofore the Parliaments
decided all matters concerning the
*Regale*, meerly by possession; and

A Restriction of the Regale.

which

which is pretty ſurprizing, upon a difficulty that was ſtarted (1) in the Parliament of *Paris*, concerning the *Regale* of the Biſhoprick of *Puy*, there was but one part of the *Regale* of that Church adjudged to the King, becauſe after having examined the Reaſons on both ſides, it was found that the King had enjoyed but a part of the *Regale* during other Vacancies of that See. And becauſe it was evident that the King had not enjoyed the Forts of the Town, and ſeveral Caſtles, it was decreed that the Church of *Puy* ſhould not be moleſted in theſe and ſeveral other points, which the King did not claim by virtue of the *Regale*, becauſe he was not in poſſeſſion of them. When the Queſtion is of Impoſing a Servitude or Burden upon any whoſoever, good Titles muſt be ſhewn, or long Poſſeſſion prov'd: And therefore the King, who did not think that by the Right of the *Regale* he could take the Forts and Caſtles of that Town, (2) made a Declaration, whereby he reſerves to himſelf the power of taking into his hands the aforeſaid Forts and Caſtles by Right of Superiority, when the Intereſt of his Service required it.

(1) *Ann.* 1258.

(2) *Ann.* 1259.

The Custom of the Parliaments.

The Parliaments observed the same Rule for deciding the matter of the *Regale* under King *Philip* III. the Son of St. *Louis*: for there is to be found in an Ancient Record of the Court of Parliament, (2) this Decree against the Pretensions of the Kings Officers to the Church of *Albi*, on occasion of the Right of the *Regale*; *Reddita per dominum regem procuratoribus Capituli Albiensis Regalia Ecclesiæ Albiensis, quo mortuo Episcopo Albiensi, Senescallus Cassonensis ad manum domini regis ceperat, & saisinaverat sine causa, cum dominus Rex super hoc aliâs nunquam usus fuisset, prout ex aliorum & ipsius relatione fuit inventum.* At that time the Right of the *Regale* was not determined and fixt, but Practice, and the received Custom was exactly followed insomuch that there were some Churches wholly exempted from the *Regale*, and others only subject to part of it. In the beginning, the *Regale* reached only Fees that held of Princes, and it was after extended to the Revenues that accrued from Tithes, and even the Collation of Benefices depending on Churches. The Churches that retained

(2) *Ann.* 1272.

the Ancient Right of the *Regale*, were not at all ſubject to that Right for the Revenues of Tithes, and Collation of Benefices; and that was the reaſon why Parliaments adjudged only to the King in ſome Churches, the *Regale* for the Rents of Lands and other Temporal Poſſeſſions of the Churches, and left to the Biſhops the Revenues ariſing from the Altars, Tithes, Offerings, and ſometime the Collation of Benefices.

This Right of the *Regale* (1) was confirmed by the Council of *Lyons* at the Inſtance of King *Philip* III. in preſence of his Ambaſſadours: But the Council only confirmed the Cuſtom of the *Regale* in the places where it was already introduced, and prohibited the bringing of it into other places. (2) M. *de Marca*, who relates the Decree of that Council, obſerves that the term *Regalia* is there taken in a new ſenſe, for the keeping and enjoying of all the Fruits and Revenues during the Vacancy of the See: And beſides, he adds, that under the name of Fruits, the Collations of Benefices are comprehended, becauſe of the Conſtitution of *Alexander*

(1) *Ann.* 1274. The *Regale* authorized by a general Council.

(2) *Petr. de Marc. lib.* 8. *de concor. c.* 24.

*der* III. which preceded that Council, wherein it is expreſt, that the Collation of Benefices ought to be reckoned among the Fruits and Profits. But it ſeems to me that the Intention of Pope *Gregory* X. in that Council, was to hinder for the future, Lay-men of what Quality ſoever they were, from invading Church-Lands and Revenues, during the Vacancy of the See, under any pretext that might be alledged, either of the *Regale*, Cuſtody or Protection; becauſe, in effect, they who ſeized the Revenues of Churches after the Death of the Biſhops, never wanted Reaſons for it, alledging the pretext of Protection or Cuſtody. The Council comprehends the Right of the *Regale*, which ſeveral Princes enjoyed, with the other Rights which many great men pretended for poſſeſſing the Revenues of Churches during the Vacancy of the See. But ſince the Maxims of the Canon Law are for moſt part taken from the Civil, Pope *Gregory* thought it fit (1) to leave thoſe Rights to thoſe who were already in poſſeſſion of them, without examining the lawfulneſs or unlawfulneſs of the Titles; becauſe it would

(1) *Tantum præſcriptum, quantum poſſeſſum.*

would have been a difficult matter to have ſucceeded in it, by reaſon of the long Poſſeſſion of many Princes, which gives a ſufficient Title in the Civil Law.

As to the Collation of Benefices, I do not think that the Council intended to comprehend them under the name of Fruits and Revenues, as M. *de Marca* affirms. The truth is, it is a Maxim received and authorized by Cuſtom ſince the Introduction of the New Law, that Collations are of the number of Fruits: (1) But the term Collation is then taken in a larger ſenſe, to wit, for the Preſentation or Nomination to Benefices; whereas the Kings of *France* by the Right of the *Regale*, enjoy a real Collation of Benefices, which the Canoniſts affirm to have ſomething of the Spiritual. For the Kings of *France* preſent not barely to Benefices like other Patrons; but they confer in full Right by virtue of the *Regale*, in the ſame manner as Biſhops do. Nay, the *Regale* gives more Right to the King of *France* in regard of the Spiritual, than Biſhops have: For it is a Maxim of Canoniſts, that none but the Pope can receive Reſignations *in favorem*; and the reaſon they

(1) *Collationes ſunt in fructibus.*

The Right of Collation attributed to the Kings of *France* by the *Regale.*

they give is, because a Resignation made in favour of another, is a kind of Simony; and that the Pope alone, who is above Ecclesiastical Laws, can dispense with it: *Solus Papa*, say they, *purgat à Simonia*: But they should add, *& Rex Francorum*; for the King of *France* receives the Resignations which are called *in favorem*.

There are a great many other Rights which the Kings of *France* enjoy by virtue of the *Regale*, and which are peculiar to that Right. The Lawyers and *French* Canonists have much ado to explain the Original of these Rights, which they suppose according to the common Rules of the Canon Law to be Spiritual Rights, and by consequent not to belong to Lay-persons, unless it be by a special Priviledge granted by Popes to the Kings of *France*: But since no such Priviledge can be made appear, and that on the other hand, the Kings of *France* pretend not to hold that Right by Priviledge of the Pope, the difficulty grows greater. Pope *Boniface* VIII. in the contest that he had with *Philip* the *Fair*, failed not to write to that Prince, that he accounted those Hereticks who

*Boniſ. VIII.*

pretended

pretended that the Collation of Benefices, which he ſaid was a Spiritual Right, could belong to Laicks. *Johannes Pariſienſis*, who wrote at that time upon the ſame Subject, affirms that there is a difference to be made betwixt Princes and Subjects, in that theſe as being inferiour to others in Knowledge, and diſcerning of Perſons proper for Benefices, could not but preſent; whereas Princes might confer, (1) as being endowed with a full and entire Knowledge. But that Reaſon does not conclude in the point in hand, where the Queſtion is of the Spiritual, and not of the Temporal.

*Joan. Pariſ.*

(1) *Habent omnem peritiam in ſcrinio pectoris.*

That difficulty nevertheleſs may eaſily be reſolved, if we ſuppoſe that the Right of Collation which belongs to Biſhops, is not properly a Spiritual Right; and that therefore Laicks who have enjoyed it by a long Cuſtom, cannot be excluded from it. It is to be obſerved then, that according to the Rules of the Ancient Canon-Law, the Collation of a Benefice was wholly Spiritual, becauſe then there was no other Collation, but only the Ordination, which cannot be given but by the Biſhop.

Biſhop. But ſince Ordination hath been diſtinguiſhed from the Eccleſiaſtical Function, many new terms have been invented; and among others, that of Collation or Inſtitution, and the Right of Collating is attributed only to the Biſhops; ſo that Lay-Patrons may name or preſent to Benefices, provided thoſe whom they have preſented, take Collation or Inſtitution from the Biſhops, which alone gives the power of performing Spiritual Functions. Nevertheleſs, we find in *France*, eſpecially in *Normandy*, many Laicks, who in full Right confer Benefices, as well as the King. There are even Abbeſſes, as the Abbeſs of *Montivillers*, in the Country of *Caux*, who in full Right confer Cures, without any neceſſity of having recourſe to the Ordinary for Collation or Inſtitution. I know it will be anſwered to this, that Laicks, who enjoy that Right, are grounded on Priviledges granted them by the Pope. But however it be, it is certain, that if that Right were neceſſarily inherent in the Quality of Biſhop, the Pope could not by a Priviledge grant it to Laicks, no more than he can grant the Right of Ordaining,

ing, wherein the Spiritual really conſiſts. And therefore that Collation which ſucceeds Ordination, is not the ſame Spirituality with the Ordination; but it hath been only thought neceſſary to hinder Perſons uncapable from poſſeſſing Benefices. The Right of conferring Benefices deprives not Biſhops of the Right they have of Judging of the Capacity of thoſe who have received Inſtitution or Collation from Laicks: For beſides that firſt Inſtitution, which is called *Collative Inſtitution*, there is another kind of Inſtitution called *Inſtitutio Autoriſabilis*, which gives the Biſhops power to examine the Capacity of thoſe, on whom Laicks have conferred Benefices, that ſo they may authorize their Collation. There is no ſuch great difficulty then, as is commonly imagined, to conceive the Right of conferring Benefices, which the Kings of *France* enjoy by virtue of the *Regale*. That which is called Spirituality in beneficial matters ſince the Introduction of the new Canon-Law, is far different from that which is truly Spiritual according to the Ancient Canons; and that's a thing not ſufficiently minded by the Canoniſts.

nists. Nevertheless the same *John* of *Paris*, whom we mentioned before, observes very well, that the right of conferring is not properly Spiritual, but that it is only annexed to the Spiritual. Let us now return to the History of the *Regale*, and see how it was established in *France* after the Decree of the Council of *Lyons*.

(1) *Ann.* 1302. The *Regale* under *Philip* the *Fair*.

(1) King *Philip* the *Fair* made an Edict for authorizing the *Regale*, after it had been confirmed by Pope *Gregory* in the Council of *Lyons*: But it extended only to Churches, where it had been introduced by Custom. These are the terms of his Edict; *Regalias quas nos & nostri prædecessores percipere assuevimus & habere in aliquibus Ecclesiis regni nostri*. That Prince conformed his Edict to the Decree of the Council, and would have the Rents of Churches preserved, and the ordinary Revenues only received in title of Fruits. (2) The Constitution of *Philip* of *Valois* restrains also the *Regale* to Custom, and to the Churches of the Realm, where that Right was established. *Louis* XI. (3) made a like Edict, and besides, prohibited his Officers, to molest Churches,

Under *Philip* of *Valois*.

(2) *Ann.* 1334.

Under *Louis XII.*

(3) *Ann.* 1499.

*where*

*where there was no Right of* Regale *or Cuſtody.* And therefore M. *de Marca* after *Ruzee*, *Paſquier*, and ſeveral other *French* Lawyers, who have written about the *Regale*, obſerves that that Right is not in all the Churches of the Kingdom, and that in thoſe where it is ſettled, it is not in all after the ſame manner. He nevertheleſs confeſſes, that many have pretended the *Regale* to be a pure Royal Right; and therefore that it ought to extend to all the Churches of the Kingdom; but that *Paſquier*, the Kings Advocate in the Chamber of Accounts, a knowing man in that matter, calls thoſe men *Court Flatterers*.

It is certain, that notwithſtanding all the Actions that have been brought upon that Subject in the Parliaments, the Kings of *France* have never taken to themſelves the *Regale* but in certain Churches: And we have ſtill (1) an Edict of *Henry* IV. wherein he declares, *That he pretends not to enjoy the* Regale, *but in the manner that he and his Predeceſſors have, without ſtretching it to the Prejudice of Churches that are exempted from it.* The late King of *France* (2) made alſo an Ordinance, whereby he

(1) *Ann.* 1606. Under *Henry IV.*

(2) *Ann.* 1629.

Under *Louis XIII.*

declared, that he would enjoy the Right of the *Regale*, as in times past: And seeing these Terms were Ambiguous the Clergy made their Remonstrance that they might have the explication of them. Monsieur *de Marel* Keeper of the Seals, and the other of the Kings Commissioners who had framed that Ordinance, answered, *That the King declared that he would not enjoy the Regale, in those places where he had not enjoyed it for time past.* And thus you have an abridgment of the History of the *Regale* in *France*. But at present there is no more regard had to all this, neither have I related it but as an Historian, and to serve for Instruction. The present King hath (1) not long since by a Declaration registred in the Parliaments, comprehended all the Churches of his Kingdom within the *Regale*, except four, which are exempted from it on an onerous Title. So that there is no more need of consulting the Chamber of Accounts, where the accounts of the *Regales* were taken, to know how matters went heretofore, and what Churches were subject to the *Regale*; for that Declaration prevents a great many

(1) *Ann.* 1674.

The *Regale* at present in all the Churches of *France*.

many law ſuits. Without examining whether the *Regale* be a Crown right and by conſequent unalienable, it cannot be denied but that the Sovereign who grants a Priviledge, may revoke it, and therefore the King might reſcind the Priviledges and Exemptions from the Right of the *Regale*, which the Kings his Predeceſſors had granted to ſome Churches of the Kingdom. The Parliaments had already reſcinded moſt part of theſe Priviledges, of which ſome were ill grounded. I ſhall not here give a Catalogue of the Churches of the Kingdom, which pretend not to be Subject to the *Regale*, becauſe it would be needleſs and unſeaſonable. Such as would be farther informed as to that, may conſult the *French* Lawyers who have handled that Subject.

Nor ſhall I ſpeak of the Rights, which other Princes have of providing to the Benefices of their Kingdoms: For beſides that moſt part of theſe Rights belong to them in Quality of Patrons, or are founded on Priviledges, and Conceſſions granted by Popes, and ſometimes on Concordats, made betwixt them and the Court of *Rome*; theſe

are matters void of my design, which is to apply my self more particularly to the Rights, whereof *France* is in Possession, than to the Customs of other Kingdoms. Yet I cannot silently pass over the Right which the Kings of *Spain* injoy in *Sicily*, and which is Commonly called the Monarchy of *Sicily*, because it is the greatest Spiritual Right, that Princes ever took to themselves. It even surpasses that which *Henry* VIII. Of *England* boldly took when he separated from the Church of *Rome*. The King of *Spain* in Quality of King of *Sicily*, pretends to be Legate *à latere*, and born Legat of the Holy See; so that he and his Vice-roy in his absence, have the same power over the *Sicilians* as to the Spiritual that a Legate *à latere* could have. And therefore they who execute that Jurisdiction in *Sicily*, for the King of *Spain*, have power to absolve, punish and excommunicate all sorts of Persons, whether Laicks or Ecclesiasticks, Monks, Priests, Abbots, Bishops, and even Cardinals themselves, that reside in the Kingdom. They acknowledge not the Popes Authority, being Soveraign Monarchs

Monarchy of *Sicily*.

Monarchs as to the Spiritual. They confeſs that the Pope hath heretofore given them that Priviledge; but at the ſame time they pretend that it is not in his Power to recal it: And ſo they acknowledge not the Pope for head, to whoſe Tribunal no Appeal can be made, becauſe their King has no Superiour as to the Spiritual. Moreover, that Right of Superiority is not conſidered as delegated, but as proper; and the King of *Sicily*, or they who hold that Juriſdiction in his place, and who are Lay-men, take the Title of *Beatiſſimo & Santiſſimo padre*, attributing to themſelves in effect, in reſpect of *Sicily*, what the Pope takes to himſelf in regard of the whole Church; and they Preſide in Provincial Councils.

It was a matter of aſtoniſhment, that in our Age, Queen *Elizabeth* took the Title of Head of the Church of *England*: But ſeeing in the Kingdom of *Sicily*, the Female Succeeds as well as in *England*, a Princeſs may take the Title of Head of the Church of *Sicily*, and of *Beatiſſimo & Santiſſimo Padre*. Nay it hath happened ſo already in the time of *Jean* of *Arragon* and *Caſtile*, the Mo-

ther of *Charles* V. the *Sicilians* ground this Right of Supremacy in Spirituals upon a Bull of Pope *Urban* II. granted to *Roger* and his Successours, wherein are these words: *Quæ per legatum actum fumus per vestram industriam, legati vice cohiberi volumus.* Cardinal *Baronius* who in his (1) Annals refutes the pretended Spiritual Monarchy, thinks that that Bull was granted by the *Antipope Anacletus*, and that it hath not been faithfully related. But it is far more probable that it is false, and that it hath been forged during that time, that *Sicily* had no Communication with the Church of *Rome*, from which it was separated, refusing to acknowledge the Holy See, either in Spirituals or Temporals. It was an easy matter at that time, for the Kings Officers, to foist in that Bull, and to put it in execution; for *Sicily* continued ninety years under an Interdict, from the year 1282. until the Second year of the Pontificat of *Gregory* II. who took off the Interdict. During that time, *Martin* King of *Arragon*, made great attempts upon the Ecclesiastick Jurisdiction, and ordained that Bishops themselves might not

(1) *Tome II. Ann.* 1097.

not Excommunicate any without his Permiſſion, or the Permiſſion of his Vice-roy, but *Sicily* being in poſſeſſion of that Spiritual Monarchy, the Kings of *Spain*, who take the Title of Catholick Kings, have rather encreaſed than diminiſhed it. *Charles* V. cauſed an exact ſearch to be made, to find out Titles to Juſtify this pretended Monarchy; but it was no where found ſave in the Book of the Pandects that was printed in the year 1526. and confirmed by *Charles* V. the ſeventh of *December* the ſame year. Afterward, in the year 1556. there was a Book publiſhed, called the *Monarchy*, wherein are contained the Rights of that Juriſdiction. And that this Book might be rendered the more Authentick, it was ſigned by all of the ſacred Colledge, that is to ſay, the Council of the Kingdom. One Copy of it is preſerved in the Royal Chancery of *Sicily*, and another Copy was ſent to the King.

The Bull of *Urban* II. which is the Baſis of the *Sicilian* Monarchy, is related at length by *Fazelle* in his (1) Hiſtory of *Sicily* Printed at *Palermo* in the year 1558. But hiſtorians who wrote before him have made no mention of it; And it is

(1) *Decad.* 2. *lib.* 7. *cap.* 1.

very probable, that *Fazelle* took it from *John Lucas Barberius* a *Sicilian*, who about the Year 1513. compoſed in favours of King *Ferdinand*, a Volume of all the Priviledges and Titles of the Kingdom of *Sicily*, which he called *caput Brevium*; and in that Volume he inſerted the Bull of *Urban* II. As if the Original had been in the Chancery. It is not to be imagined how much the word *Monarchy* hath diſpleaſed the Court of *Rome*. (1) *Nomen hactenus inauditum*, ſays Cardinal *Baronius*, *tunc proclamatur infauſtum, adſcribitur chartis, & memoriæ perpetuæ conſecratur, jam regiis cuſumtypis, & imperatorio promulgatum Edicto.* And he adds, that the Kings of *Spain* in quality of Kings of *Sicily*, take a Title that Tyrants and the greateſt Enemies of the Church of *Rome* durſt never claim. (2) *Quod nunquam à piis regibus, nec à Tyrannis ipſis Romanæ Eccleſiæ perduellibus, neque ipſis acerbiſſimis Romanæ Eccleſiæ perſecutoribus Friderico filio atque nepotibus, ejuſmodi Monarchiæ nomen expugnatum ullatenus reperitur.* In fine the Cardinal pretends that to atrribute to *Sicily* a Spiritual Monarchy, is to overthrow Divine

(1) *Baron. Ann.* 1097. n. 28.

(2) *Ibid.* n. 30.

Laws

Laws, and that it is only to the Church of *Rome* to which our Saviour hath given that Title. But the Kings of *Spain* ſlight all the complaints of the Court of *Rome* as to that, and perſiſt in the enjoyment of the Rights of their Spiritual Monarchy in *Sicily*, where they acknowledge no other Pope but the King, or ſuch as he does commiſſionate in his place. So that it may be ſaid, there are two Popes and two Sacred Colledges in the Church, to wit, the Pope of *Rome*, and the Pope of *Sicily*, to whom alſo may be added the Pope of *England*, for the King of *England* takes the Title alſo of Supream over the Churches within his Dominions.

Thus far we have ſhewn the Original and Progreſs of Eccleſiaſtical Revenues, how they have been adminiſtred, and in what manner they have come into the Poſſeſſion of Chapters and Monaſteries. We have, beſides, ſpoken of the power of Biſhops and Princes, and of the Pope alſo, over ſuch Revenues. It would be now time to ſhew more particularly, by what ways Popes have made themſelves almoſt abſolute Maſters of the goods of the Church, and to obſerve

ſerve the quarrels they have had with Princes upon that account. But ſince *Fra. Paolo* hath handled that in his Hiſtory, and that it is ſufficient to read the Decretals, to be informed in what manner their authority hath been by degrees eſtabliſhed, I ſhall ſpeak no more of that Subject. And it is for the ſame reaſon, that I have not ſaid any thing neither of the Original of Tithes, becauſe it hath been alſo well enough handled by *Fra. Paolo.* All men are ſufficiently perſwaded, that under the firſt Race of the Kings of *France*, that Nation had no recourſe to *Rome* for regulating the affairs of the Church. Nay and under the Second Race, *Charlemain* who gave a great deal of authority to Popes, did not conſult them about the Erection of the new Biſhopricks and Arch-Biſhopricks which he eſtabliſhed. In *Italy* it ſelf, many Ages after, the Princes and Biſhops were abſolute Maſters of all that belonged to Churches. The Prince or Judges appointed by him, decided the differences that happened betwixt Biſhops and Abbots, and amongſt other Church-Men, concerning their Revenues and Priviledges: but ſeeing matters now

The Popes Power in *France.*

now a days are ſettled in another manner, and that the Diſcipline of the Church is wholly altered, I thought it neceſſary, having obſerved the original and Progreſs of Church Revenues, to deſcribe in a few words the preſent State of beneficial matters. It would be to no purpoſe to know the Cuſtoms of our Fore-Fathers, if we be ignorant of what is at preſent in uſe amongſt our ſelves. The former ſerve only for our inſtruction, but the latter will be uſeful for the conduct of our lives. I ſhall ſay nothing in this place of the Original of Benefices, in the manner that they are eſtabliſhed at preſent; for it is very well known that they did not begin till about the Eleventh Century: And whereas in the Ancient Canons there is only mention made of Ordination and the Miniſtry, afterward there was no more talk but of the Portion or Benefice. Nevertheleſs, though the manners of expreſſion, and a great part of the Ancient Diſcipline were wholly changed, yet in many things the Maxims of the Ancient Law were ſtill obſerved. For Inſtance, heretofore Ordination differed not from the

An Explication of the New Canon Law.

the Ministry or Benefice; and therefore when by the Introduction of the New Law, they were separated, that Maxim was still retained, That he who can Ordain, can also Confer a Benefice; and that he who cannot Ordain, cannot Confer a Benefice neither. But by degrees the Popes have by their Priviledges and Exemptions derogated from the Common Law that was grounded on the Ancient Canons; and we see that Abbots exempted from the Jurisdiction of Ordinaries, confer in full right, Cures and other Benefices. Though the Establishment of Benefices be commonly referred to the end of the Tenth Century, or beginning of the Eleventh, yet some footsteps of them are to be seen long before. For about the year 500 under Pope *Symmachus*, to some Church-men Portions of Land were assigned, to be enjoyed by them for Life, as appears by the terms of (1) the Epistle of that Pope to *Cæsarius*, where he prohibits the alienation of Church-Lands, unless it be in favours of Clerks who might have merited, or of some Monasteries or Hospitals, and that only during the Life of those that should

(1) *Tom. 1. Concil. Gal. Ann.* 513.

ſhould enjoy them. *Poſſeſſiones, quas unuſquiſque Eccleſiæ proprio dedit aut reliquit arbitrio, alienari quibuſlibet titulis atque contractibus, vel ſub quocunque argumento non patimur; niſi forſitan Clericis honorem meritis, aut Monaſteriis, religionis intuitu, aut certe peregrinis neceſſitas largiri ſuaſerit; ſic tamen ut hæc ipſa non perpetuò, ſed temporaliter, donec vixerint perfruantur.* Theſe words make it manifeſt enough, that even in that time there was ſome kind of Benefice, though the Portion of Revenues was not as yet made to Church-men in particular; but that was rare at that time, and only granted for extraordinary Cauſes. *Ib. q. 1. poſſeſſiones.*

There are beſides ſome footſteps of the Foundations of Benefices, and of the Right of Patronage in the Tenth Canon of (1) the Firſt Council of *Orange*; but the Cuſtom of that Time was far different from the preſent Practice. The Rules of the New Canon Law, which began chiefly under Pope *Nicholas* I. who lived about the middle of the Ninth Age, brought a great alteration in the Affairs of the Church. Pope *Gregory* VII. who lived pretty forward in the (1) *Ann.* 441.

The Argumentation of the New Law.

the Eleventh Age, extended the Rules of that New Law, beyond all that his Predeceſſors had done: And the Popes that came after him were ſo far from remitting any thing of theſe Novelties, that on the contrary, they augmented them; ſo that the Law which hath been introduced into the Church ſince that time, deſerves better to be called the Popes Law, than the Canon Law; becauſe in ſettling this New Law, there hath not been ſo much regard had to the Ancient Laws of the Church, as to the Profit of the Popes and Court of *Rome*. And this in proceſs of time occaſioned great diſorders; ſo that Princes were obliged to make Laws and Pragmaticks to hinder thoſe Abuſes; though it hath not been in their power entirely to aboliſh them.

(1) *Ann.* 1150. The Compilation which *Gratian* the Monk (1) made of the Canons of Councils, the Decretal Epiſtles of Popes, and of many ſentences of the Fathers, of which he made up a Body of Canon Law, contributed much to the authoriſing of the New Law: For that Collection of Canons was publickly taught in Schools, and even made uſe of in deciding

ciding Controverſies. The Fathers and Councils were not ſtudied in their Original, but only in the Decrees of *Gratian*; and Men were not knowing enough at that time, to perceive that a great many of the Citations of *Gratian* were falſe, and that he followed not always the Rules of the Ancient Laws, having inſerted into his Collection ſeveral ſuppoſititious Pieces. Beſides that, he gave to the Popes Decretals the ſame Authority as to general Councils, and ſometimes even perverted the words of the Ancient Canons, that he might accommodate them to the Law which was authorized by the Popes of his Time. But the Collection of the Decretal Epiſtles of Popes, which (1) was made by order of *Gregory* IX. occaſioned a far greater Alteration in the Affairs of the Church: Nevertheleſs, they were in *France* publickly read in Schools, as well as the Collection of *Gratian*. Theſe Decretals have been the cauſe of an infinite number of Law-Suits; and though they were received in the Weſtern Church, and publickly taught by the Profeſſors of the Canon Law, yet there was a neceſſity of rejecting

(1) *Ann.* 1230.

jecting them on several occasions, and having recourse to the Ancient Canons. At that time the Compilation of *Gratian* was called the Antient Law, though it contained a great many Novelties: But being compared with the Book of Decretals, there was some reason for calling it so. The tedious and troublesom Debates which the Kings of *France* had with the Popes, was the cause that the *French* despised the Collection of the Decretals; nor are they at present much esteemed by them. They are of Opinion that that work was only compiled, for establishing the Interests of the Pope, and overturning the Ancient Law. And the Satyrs that were made against the Decretals run still in their minds, especially this Proverb which was heretofore so common.

*Depuis que le decret print ales*
*Et Gend armes porterent malles,*
*Moins allerent à cheval,*
*Jamais le monde n'eut que mal.*

(tales,
Since the Decrees were pieced with
And Souldiers put on Coats of Males;

The

Since lazy Monks have mounted pad,
The World's been plagu'd with all that's (bad.

But after all, as to what concerns the common practice, the Decretals are to be preferred before the Decrees, ſeeing moſt of the Rules of Law which now are in uſe, are taken out of the Book of Decretals, and not from the Collection of *Gratian*. Nor is the ſixth Book of Decretals to be ſlighted, which is commonly called the Sext, though it was compiled (1) by the order of Pope *Boniface* VIII. an enemy of the *French*; becauſe a great part of the Conſtitutions that are contained in that Collection have been taken out of the Decrees of the Council of *Lyons*, and are obſerved in *France*. Beſides, the Decretals which carry the Title of *Clementine*, becauſe that Collection is attributed to Pope *Clement* V. have been for moſt part taken out of the Council of *Vienne*, where the Ambaſſadours of *France* were preſent. The other Decretals that are contained in the Body of the Canon Law under the name of the *Extravagants* of *John* XXII. and the common *Extravagants*, ſeem not to

(1) *Ann.* 1298.

have so great authority in *France*, as the former Decretals; Neither do I think that all the new Bulls of which the Bullary is composed, are much esteemed there, because they have never been received in *France*.

Since the great clashings that happened betwixt *Boniface* VIII. And *Philip* the Fair, and betwixt *Julius* II. and *Louis* XII. The *French* have been much more cautious in admitting the Bulls of the Pope, than they were before. The differences likewise that happened in the Council of *Trent*, in respect of *France*, have been also the cause that the *French* suspect all that comes from *Rome*, and that they submit not easily to its Laws. And therefore the Popes Bulls are not received till first they be examined, and, if it be necessary, modified; Nay and many times they are not actually received. In a word, there are but some of the Rules of the Chancery received in *France*. These are now the grounds on which the new Law is founded, and which hath been very much qualified in *France*, the knowledge whereof is necessary, that we may understand what measures are

at

at present to be taken in Beneficial matters.

Though *France* hath submitted to the New Law, yet hath it still retain'd somewhat of the Ancient Canons: And when it hath found the new Laws to be contrary to the Interest of the State, it hath had recourse to the Ancient, and defended it self by the Canon Law. And therefore they have given the name of Priviledges or Liberties of the *Gallican* Church, to that which was no more but the Ancient Canon Law; But which hath been called Priviledges or Liberties in respect of the New. For instance, when the *French* have been prest by the Authority of the Decretals, they have had recourse to the Ancient Law contained in the Decrees of *Gratian*; but since the Collection of *Gratian authorises* a great many false Decretals of the first Popes, which have introduced a New Law, the *French* Bishops have had recourse to a more Ancient Compilation of *Canons*, when the Authority of these Decretals hath been objected to them. Nevertheless, for all that *France* could do, the Popes Law hath at length prevailed, notwithstanding the Pragmaticks

The Original of the Liberties of *France*.

ticks of the Kings, who endeavoured the re-establishment of the Ancient Canons.

The most Ancient Pragmatick of *France* is attributed (1) to St. *Louis*: But there is ground to doubt whether it be his or not, though it seems no man hath hitherto questioned it. The reason why it is thought to be of St. *Louis*, is because it bears the name of a King called *Louis*, and that the Date proves evidently that it can be of no other *Louis*, but *Louis* IX. *Elias* of *Bourdeille* Archbishop of *Tours*, who was afterwards made a Cardinal, hath mentioned all the Articles of that Pragmatick in a Writing that he composed in the the time of *Louis* XI. against the Pragmatick Sanction of *France*. It is true, he refutes the Pragmatick of St. *Louis*, as if it had been really the Act of that Prince: But he seems to have doubted of it, not daring absolutely to affirm that he was the Author of it, but only (2) that it was ascribed to him. The Contemporary Authors who have written his Life, speak not a word of it. The Popes who have so vigorously opposed whatever they thought contrary to

(1) *Ann.* 1268.

(2) *Adscribitur ei feciſſe pragmaticam.*

to their Intereſts, did not at that time complain of that Pragmatick, though it wholly ruined their Intereſts. Is it poſſible that in the (1) Aſſembly of *Bourges*, where that famous Pragmatick paſt, no mention ſhould have been made of the Pragmatick of St. *Louis*, if there had really been any ſuch? Nothing could at that time have been of greater force to authorize that Aſſembly. There appears nothing more Ancient in favours of the Pragmatick of St. *Louis*, than the Remonſtrances made by the Members of Parliament to King *Louis* XI. And there is a great deal of probability that it hath been foiſted in about that time (2) becauſe it was known that King *Louis*, being then but Dauphin, was of Intelligence with the Court of *Rome*, for abrogating the Pragmatick made at *Bourges*; and the Members of Parliament omitted nothing that could make for that Pragmatick. There are beſides, terms ſomewhat extraordinary in the Pragmatick attributed to St. *Louis*. Theſe words, *ad perpetuam rei memoriam*, are not of the ſtile of Ordinances. Nor do we find any where elſe, that St *Louis* affected

(1) *Ann.* 1438.

(2) *Ann.* 1461.

that way of speaking that his Crown depended of God alone; neither was it at all proper for the affairs that then were in agitation. I could bring a great many other Reasons, to shew that there is ground to doubt of the Reality of that Pragmatick: But besides that that would lead me into a long and tedious digression, the Canon Law of *France* subsists not so much upon the Pragmatick ascribed to St. *Louis*, as upon that of *Bourges*, and the Concordat which hath derogated from several Articles thereof.

The Rules of the *French* Law.

To know then the substance of the Law of *France* in regard of Beneficial matters, we must not wholly rely on the Popes Decretals; but it is also necessary to know wherein the Pragmatick, Concordat, the Edicts of the Kings, and the Sentences of Supream Courts differ from the Law established in the Decretals. Besides, seeing the the Concordat or Treaty that past (1) betwixt *Leo* X. and *Francis* I. hath abolished several Articles of the Pragmatick, there is no more of the Pragmatick to be retained, but what hath not been rescinded or qualified by the Concordat; nor does

(1) *Ann.* 1516.

does the Concordat it ſelf entirely ſubſiſt at preſent, becauſe the Popes and Kings of *France* have by mutual conſent derogated from it in many heads. Neither muſt we inſiſt too much on Ordinances; for there are ſome of them, eſpecially thoſe that were made in the States aſſembled at *Orleans*, which have not been received into practice. In fine, the Juriſprudence of Decrees hath not always been the ſame, and does ſtill vary daily; and which is obſervable, Courts do not agree among themſelves in their deciſions; not only Courts in different Provinces, where it is hard that Judgments can be the ſame, by reaſon of the different Cuſtoms on which they are grounded, rather than the Law; but even in *Paris*, where the Maxims of Parliament differ from thoſe of the great Council, and many times the Council of State hath Prejudications which agree not with thoſe that are followed in the Parliament, and in the great Council. It were to be deſired, that there might be an uniformity in Judgments, which would not be difficult to be put in practice. Theſe are the Principles of the *French*, which I have

trac'd with all possible Exactness. In the sequel of this Discourse, I shall treat of the Customs of *France* in respect of Beneficial matters.

The Canon Law.

According to the Rules of the Canon Law, every Bishop ought to provide for the Benefices of his Diocese. Heretofore none but the Bishops could give liberty to build Churches and Chappels in their Dioceses, and appoint Priests to govern them; and therefore all Churches depended on them: And as the Pope ordained none without the limits of his Diocese, so could he not give Ecclesiastick Employments, which now a days are called Benefices, but within the bounds of the same Diocese. That is expresly set down in the XVI. Canon of the first Council of *Orleans*, where it was decreed (1) that all Churches that should be built, should be in the power of the Bishop, according to the Rules of the Ancient Law. But the Bishops cannot now have the benefit of that Ancient Law, as being abolished by a new and particular right. There are at present Patrons both Ecclesiastick and Laick, who have a special right of presenting to the Churches which they have founded:

(1) *Omnes Basilicæ, quæ per diversa loca constructæ sunt, vel quotiaie construuntur, placuit secundum Canonum regulam, ut in ejus Episcopi, in cujus territorio sitæ sunt, potestate consistant. Tom. 1. Concil. Gall. Ann. 511.*

And

And beſides, the Pope in quality of Univerſal Biſhop, hath taken to himſelf a full power over all the Churches in the World. And therefore Biſhops can have no advantage of the Ancient Canon Law, but when the new and ſpecial Law hath no place; for then the Canon Law is again of force. This is neceſſary to be obſerved, if we would exactly know, to whom it doth belong to confer Benefices, which are to be preſented according to the Rules of the Canon Law, that (2) gives the Biſhop Power over all the Churches of his Dioceſe; or otherwiſe according to the Preſcript of the new and particular Law: *Inferiores non poſſunt Juriſdictionem Epiſcopalem vendicare, niſi de Jure Speciali.* It is therefore pertinent to know what that ſpecial Right is, which Derogats from the Common and General Law. Let us begin with the Right of Popes.

Particular Law.

(1) *Epiſcopus de jure communi fundatus eſt in liberâ adminiſtratione omnium Eccleſiarum ſuæ Diœceſis.*

The Pope may concur with the Ordinaries, becauſe he is the Ordinary of Ordinaries, and that his Juriſdiction extends over all the Churches in the World, for which Reaſon he may alſo prevent them. He pretends to a fulneſs

The Rights of Popes.

of

of Power, which he hath not renounced, by communicating the same to others; whence it follows, that without overthrowing the right of Ordinaries he may prevent them; and he that presents first, has the advantage. I speak here, according to the Maxims of the New Law, without examining whether they be true or false, because that would be needless in regard of the practice which is the matter in hand. The Pope may then in full right confer Benefices by Prevention; but seeing Prevention is very prejudicial to the Collations of Ordinaries, it is qualified in several Heads.

1. Prevention hath no place at present but for Vacant Benefices, and the Pope cannot now dispose of Benefices before they be Vacant, as he did heretofore, reserving them to his own disposal. Mental Reservations and Expectatives or Reversions have been abolished by the Council of *Trent*. And therefore since that Council the Article of the Concordat, which authorized Mandats, or *Mandamus's* from the Popes, that were a kind of Reversions, is abrogated. it is to no purpose to enlarge upon the nature

Reversions abrogated.

nature and manner of executing theſe Mandats, ſince they are aboliſhed. The ſame (1) Council of *Trent* hath aboliſhed all other Expectatives or Reverſions, comprehending therein the Grants or Indulgences made to the Chancellour of *France*, the Maſters of Requeſts, Preſidents, Councillors, and ſome other Officers of the Parliament of *Paris*: But in that the Authority of the Council is not admitted; On the contrary Pope *Clement* IX. Hath augmented the Priviledges of the indulged. There is another kind of Reverſion in being in *France* though the Council of *Trent* hath alſo abrogated it, to wit, the Priviledges granted to thoſe who have ſtudied a certain number of years in any Famous Univerſity of the Kingdom, who are called Graduats. That right of Graduats, which is founded on the Pragmatick and Concordat, is ſo owned in *France*, that ſome *French* Lawyers, nay even ſome Parliaments pretend that the Prevention of the Pope cannot be prejudicial to Graduats; but the moſt received cuſtom of *France* admits the Popes Prevention in prejudice of the Graduats and indulged.

(1) *Seſſ.* 24. *Can.* 19. & *Seſſ.* 25. *Can.* 9.

The Right of Graduats.

II. The

II. The right of prevention is not in all parts of *France*, and it would even be wholly rejected there, if they received the Decrees of the Council of *Trent*. *Bretagne*, which is not comprehended within the Concordat, is not ſubject to the Prevention; but the Pope divides the Collation of Benefices with the Ordinaries. He confers them in full right during the Months of *January*, *March*, *May*, *July*, *September*, and *November*; The Ordinaries confer them during the other ſix Months. And when the See of *Rome* is vacant, the Benefices that fall in the Popes Months, cannot be provided by the Ordinaries, becauſe in that caſe the right of Devolution hath no place; but the Collation is reſerved to the future Pope. Before the Reign of *Henry* II. the Pope conferred Benefices during eight Months of the Year.

*Bretagne* is not ſubject to the Prevention.

III. The Popes Prevention cannot hurt Lay-Patrons, who always retain their right of Preſentation, unleſs they themſelves derogate from it; and then the Pope ought to ſpecifie it in his Reſcript, adding theſe words, *Accedente Patroni Laici conſenſu.* And that upon better reaſon is obſerved in reſpect of Benefices,

Lay-Patrons are not ſubject to Prevention.

Benefices, which are in the nomination of the King, and ſuch as are ſubject to the *Regale*.

IV. Some diſtinguiſh Benefices into purely Elective, Elective Collative, and purely Collative; and they pretend that the firſt which are purely Elective, are not ſubject to the Prevention of the Pope, becauſe they ſtand in need of the Confirmation or Collation of the Superiour; that in regard of the others which are Collative, the Pope may beſtow them, becauſe of his right of Prevention: But the more common practice is, that the Popes Prevention takes place in all Benefices, except thoſe, to which, as we have ſaid, the King nominates, and to thoſe that are ſubject to the *Regale*: And as to Elective Benefices, none but the Heads of Orders are exempted from the Prevention; for the Deanries of Cathedral and Collegiate Churches may at preſent be reſigned *in favorem*, and conferred by the Pope. We muſt nevertheleſs, except the Deanries that are Elective upon the Title of Laick Foundation; for then the Rule is the ſame, as of Lay-Patrons, from whoſe rights the Pope never derogates. There are beſides,

Elective and Collative Benefices.

beſides, certain Benefices wherein the Popes Prevention has no place, becauſe they require certain conditions that are annexed to them: As for inſtance, the Theological Penitentiary, and other Benefices that are aſſigned to Muſicians, or which demand certain Qualities, that are inſeparable from them. Now ſeeing theſe Qualities are perſonal; the Pope cannot ſupply them by Prevention. Beſides that, it is eaſie to hinder the Popes Prevention in Elective Benefices; for, to tye the Popes Hands, there needs no more, but to begin the Election.

Derogations from the Right of Prevention.

V. There are many things that hinder the Popes Prevention from taking effect.

I. If the Ordinary hath conferred the ſame Benefice before him, though the Collation be null and void, yet it hinders the effect of Prevention; ſo that in that caſe nothing produces ſomewhat; and it is held for an undoubted Maxim, that *Collatio Ordinarii, etiam nulla & invalida, impedit preventionem Papæ.* We muſt, in the mean while, obſerve that the bare Preſentation of the Patron is not ſufficient to hinder the Prevention,

vention, becauſe the Preſentation alone gives not the Benefice; it is neceſſary that (1) it be notified to the Collator. Nevertheleſs, many are of opinion that the bare Preſentation of the Patron is ſufficient to hinder the Popes Prevention from taking effect; and they are grounded on this, that the Right of Prevention is odious, and therefore ought not to be favoured. On the other hand, it is acknowledged by all, that the Popes Prevention hath only place, *quando res ſunt integræ*, when matters are entire. Now, ſay they, it cannot be affirmed that matters continue ſtill in an entire Condition, when the Patron hath given his Preſentation, which acquires a Right to him that is preſented; and it is certain that (2) the Pope cannot derogate from an acquired Right. Notwithſtanding all theſe Reaſons, and many more which are alledged in favours of Preſentations, that are pretended ought to hinder the Popes Prevention, yet it is the Common Opinion at preſent, that the ſingle Preſentation of the Patron, does not hinder the effect of Prevention, unleſs it hath been intimated to the Ordinary Collator.

(1) *Ut ſaltem tangat aures Collatoris.*

(2) *Juri quæſito Papa non poteſt derogare.*

II. The

II. The Indulged and *Graduats* hinder the Popes Prevention, when they have made their demand in form; for then *res non censentur integræ*.

III. The Pope himself hath derogated from his right of Prevention in favours of Cardinals, to whom he hath granted Priviledges or Immunities, that they shall not be prevented by him. There are likewise some Persons of Quality that obtain the same Priviledge from the Pope; and so they have the whole six Months for providing to their benefices, according to the Rules of the Canon Law, without any danger of being prevented.

IV. To the end the Popes Prevention may obtain its effect, there must be neither fraud nor surprise in it; wherefore the Rule of the Chancery *de verisimili notitia*, is received in *France*; and it is necessary, that betwixt the death of the Beneficiary and the Collation of the Pope, a sufficient time must intervene for carrying to *Rome* the news of the Vacancy of the Benefice if the contrary be proved the Prevention is Judged fraudulent and Anticipated, and by consequent null.

Besides

Besides the right of Prevention, the Pope hath also the right of Devolution in quality of Superiour; and in that case by common Law he may confer all Benefices after a certain time. The Ordinary hath six Months to provide for the Benefices that depend on him, and these six Months are reckoned from the day that he might have had knowledge of the Vacancy. If he provide not within these six Months, the right is devolved on the immediate Superiour, for instance from the Bishop to the Metropolitan, from the Metropolitan to the Primate, if the Primate enjoy that right, and from the Primate to the Pope, following in that the order of Jurisdiction. But the right of Devolution is of no great use to the Pope, because it is swallowed up in the right of Prevention; and besides Benefices must continue vacant for the space of a year or two, before that he could confer them by devolution, unless it be in respect of Collators who depend immediatly upon himself. If it happen nevertheless, that the ordinary Collator hath provided amiss, his right devolves instantly upon the immediate Superior, and the Ordinary hath no more right

of conferring the Benefice for that time. In that kind of devolution, application is commonly made to *Rome*, and the Pope becomes the ordinary Collator. We must however take notice, that there are certain cases wherein the Ordinaries may vary in their Collations, and that it is not always true, that when they have once conferred they lose their right; for they may give the same Benefice to several Persons upon different considerations. For instance, if they have bestowed a benefice which fell in the Months assigned to *Graduats*, to one that is not *Graduat*, they may afterward give the same Benefice to a *Graduat* that demands it. Besides, if the Ordinary hath in full right conferred a Benefice that is in Patronage, he may again confer it of new upon the Presentation of the Patron. If he had also conferred a Benefice, and it be found afterward that it was not vacant, or that he to whom he had granted it would not accept the same, he would not therefore lose his right of providing to it a Second time. So that in all these cases devolution hath no place; and therefore the negligence or excess of ordinary Collators cannot

be supplied by the Pope, seeing they are not to be imputed to their negligence or zeal. The Pope, on the contrary, can give one and the same Benefice to several Persons, because his power is not limited, as that of Ordinaries, and his right cannot be devolved, as not having any Superior. That right which Popes enjoy is the cause of an infinite number of Law-suits. All are welcom at *Rome* for their Money; and yet it is certain that one only can obtain the Benefice, though it hath been granted to many.

Farthermore, the Popes confer the Benefices of which the Incumbents or Titularies die in Court, that is, within ten leagues of *Rome*. That right is a kind of Reservation, whereof Pope *Clement* IV. is the Author. The Constitution of that Reservation is mentioned in the *Sext* the Chapter *Licet*, in these words, *Collationem tamen Ecclesiarum, personatuum, dignitatum & beneficiorum apud sedem apostolicam vacantium, specialius ceteris antiqua consuetudo Romanis pontificibus reservavit:* But seeing these words, *Ecclesiarum & dignitatum*, are general, the Author of the Gloss upon

Benefices vacant *in Curia*.

the *Sext*, who was Secretary to Pope *Boniface* VIII. pretends that the Pope hath not comprehended under that constitution Bishopricks and Abbeys, and yet the Concordat which serves us for a Rule, comprehends under the Benefices that are reserved to the Pope, upon account of Vacancy *in Curia*, both Bishopricks and Abbeys. Master *Charles Du Moulin* hath been forced to say that there hath been surprise in the Concordat. And in Effect the sense of the Constitution of Benefices vacant *in Curia* ought not to be extended, but explained according to the intention of the Popes *Clement* IV. and *Boniface* VIII. Who are the Authors of the same. And therefore there was reason to say that the Kings Commissioners were surprised and over reached, when they suffered that clause of the Concordat to pass: For it is certain, that the Benefices, which are provided by way of Election, were not within the compass of the Chapter *Licet*, nor of the Constitution *de beneficiis vacantibus in Curia*.

*Carol. Moulin.*

On the other side it is not doubted but that the nomination of the King hath

hath been ſurrogated in place of Elections, and by conſequent ought to enjoy all their rights. So that the Benefices to which the King Nominates by Virtue of the *Concordat*, ought not to be reſerved to the Pope when they are vacant *in curia*. And this the Officers of the King pretend at preſent in *France*, and the Parliament of *Paris* hath ſufficiently explained it ſelf on that Subject.

It would ſeem nevertheleſs, that the King acknowledges that Reſervation of the Popes, eſpecially when he gives his Grant to thoſe who are not of the Kingdom, and who may chance to die at Court. He granteth them no Benefices, but on condition that they ſhall obtain from the Pope a Brief, *de non vacando in Curia*; and after that, whether they obtain that Brief or not, the Benefices to which they are provided cannot be reckoned to become vacant *in Curia*. Monſieur *Doujat* hath cauſed to be Printed the Brief *de non vacando in Curia*. Which Pope *Clement* IX. (1) granted to Cardinal *Mancini* for the Abbeys that he poſſeſſed in *France*. Which is directed to the King in theſe terms.

(1) *Ann.* 1667.

terms: *Nos, ne prædicto Cardinale forte apud sedem Apostolicam decedente, majestatem impediatur, quominus ad Monasteria hujusmodi, ratione dictorum Concordatorum, aut specialis Indulti Apostolici nominare possit, opportune providere valentes, supplicationibus ejusdem majestatis tuæ nomine vobis super hoc humiliter porrectis inclinati, eidem majestati tuæ, &c.* It is plain enough by the terms of that Brief, that the Pope pretends that all Benefices vacant *in Curia*, are reserved to him, even by the Articles of the Concordat, and that the King does likewise acknowledge that Reservation by virtue thereof. I have seen some other Briefs *de non vacando in Curia*, which are expressed in the same manner. The Duke of *Nevbourg* hath obtained (1) one for the Abbey of *Fescan*, which is likewise directed to the King: Yet the Popes do but seldom grant them; and it were to be wished that they never did, yea and that it were never desired of them, that so a clause of the Concordat might not be authoriz'd, which without doubt is vicious, and which may be abrogated, without any prejudice to the substance of the Concordat it self.

(1) *Ann.* 1673.

The

Other Rights of the Popes.

The New Law received in *France* gives the Pope many other Powers which they enjoyed not, when the Church was governed according to the Ancient Canons.

I. The Creation of New Biſhopricks, and the Erection of Archbiſhopricks, being to the Pope.

II. Biſhops cannot be tranſlated from one See to another, without taking New Bulls from the Pope: And if they enjoy Abbeys or other Conſiſtorial Benefices, they are alſo obliged to take new Bulls for all theſe Benefices, and by conſequent to pay new Annats or Firſt-fruits. But it is ſtill to be ſuppoſed that the Pope cannot put this Power in execution without the Kings Permiſſion: And even in the Bulls of Tranſlation the conſent of the King is mentioned.

III. The Pope by his Bulls confirms thoſe whom the King hath named to Biſhopricks, Abbeys and other Conſiſtorial Benefices.

IV. The King cannot enjoy his Right of Nomination to Biſhopricks and Abbeys which are not ſituated in the places mentioned in the Concor-

dat; but the Pope grants him Indults or Priviledges to nominate to those Benefices. Seeing *France* is now of greater extent, than it was when the Concordat of *Bologna*, was made betwixt Pope *Leo* X. and *Francis* the first of *France*, the Kings of *France* have been obliged to obtain from the Pope Indults, which are called *Indulta Regiæ Nominationis*, of which many forms may be seen printed in the Collection of *Monsieur Doujat*. It is in the mean time in the Liberty of the Pope to grant them for ever, or only for a certain time.

V. It being a general Maxim received and approved of all, that Secular Benefices ought to be given to Seculars, and Regular Benefices to Regulars, the King cannot Emancipate Benefices from the Rule, to put them in *Commendum*, unless he have Permission from the Pope, because that is one of the Clauses of the Concordat: But the King and Pope, who have made the Concordat, dispense with it daily, it being in their Power so to do.

VI. The Pope, who pretends to an absolute Power over all Benefices, according

cording to his pleaſure Seculariſes Benefices, that are in Rule; and ſo he derogates from that great Maxim, *Secularia Secularibus, Regularia Regularibus*, in favours of thoſe, who for that end ſend their money to *Rome*. The Monks notwithſtanding, who are powerful at *Rome*, becauſe of their Generals that commonly reſide there, or of their Procurators that live in that Court for the affairs of their Societies, hinder as much as they can the Seculariſation of Benefices, which they pretend does of Right belong to them.

VII. The King cannot Alienate the Church Lands of his Kingdom without the permiſſion and conſent of the Pope; nor can he raiſe the Tenths of the Clergy, which have in proceſs of time, been converted into Ordinary Subſidies, without obtaining Power from the Pope. Heretofore Churchmen pretended that their goods were conſecrated to God, and that ſo, they were not obliged to lay them out for maintaining of Wars, or for other publick neceſſities; it being enough that they contributed to them by their Prayers.

Alienations depend on the Pope.

Prayers. But the ſpecious pretext of holy Wars cured them of that Scruple, and it was decreed in the Council of *Lateran* under *Innocent* III. That theſe Tenths ſhould be taken from Eccleſiaſticks, for the Expeditions of the Holy Land. After a Door was once opened to Tenths, the Popes and Kings together often raiſe them. But ſeeing Popes had got a Cuſtom of raiſing Tenths in *France* for their own private concerns, it was decreed in the Council of *Conſtance*, that they ſhould be no more raiſed, but with conſent of the Prelates of the Kingdom; and thereby the Popes were excluded from the Liberty of raiſing them. However, thoſe that were granted to Kings encreaſed much, and that which in the beginning was very extraordinary, hath ſince turned into a Cuſtom. The neceſſity of maintaining long Wars in *France* for Religion, promoted very much the eſtabliſhment of Tenths, which is at preſent a kind of Tax upon the Churchmen, collected by receivers, appointed for that purpoſe. We muſt, in the mean time, obſerve that Popes diſpoſe not

*Concil. Conſtantienſe.*

not at their pleaſure of Church Revenues, as they pretend they have power. They have not the Liberty to ſell the Revenues of the Church, unleſs the King and Clergy conſent to it, and the cauſes of Alienation be firſt examined: For the Bulls of Permiſſion to alienate are not received in *France*, if they contain theſe Terms, *motu proprio, ſine inquiſitione, etiam invitis Clericis.* In a Word, for Alienation of Church Lands in *France*, the two Soveraign Powers, I mean, the Pope and King muſt concur.

VIII. All Concordats, Tranſactions or Pactions in any beneficial matter, ought to be confirmed in the Court of *Rome*, becauſe there is a kind of Simony in them, private perſons not being allowed to diſpoſe of their Benefices under certain Reſervations or Conditions; and that is the reaſon why application is made to the Pope for Penſions and Reſignations *in favorem*. Ordinaries cannot appoint, nor confirm Penſions: Nor can they admit of any Reſignations *in favorem* neither, unleſs in the caſe of Permutation; Nay and

Concordats depending on the Pope.

and in that case too private persons many times apply themselves to the Pope. There is another kind of Concordat, or Transaction, which Commendatary Abbots, and Monks, daily make betwixt themselves, for dividing their Revenues, without having recourse to *Rome*. But these Concordats are easily broken, and their Successors may derogate from them, because an Abbot hath no power to oblige and tye up the Will of his Successor. He may, indeed, make over his rights during his life; but he cannot dispose of that which belongs to another. And therefore, though these Concordats were even confirmed in the Court of *Rome*, and in the Parliaments, they may still be rescinded, if it be found that one of the Parties contracting hath received any notable prejudice: In that case he is allowed to seek relief, and by stronger reason his Successour ought, who is not obliged to stand to all that hath been done by his Predecessor. The Pope himself pretends not to prejudice by his Rescripts the acquired right of others; nor indeed is it in his power, though it should even be inserted in his Rescript, that

that there hath nothing been done without knowledge of the cauſe, becauſe he may have been ill informed. Again, the Pope hath no power in *France* over the Temporal of Benefices, but only the Spiritual, for which recourſe is had to him as to a Superiour, that he may authorize the Tranſactions which private perſons have made amongſt themſelves, and purge them from Simony.

IX. None but the Pope can give Benefices in perpetual *Commendum*; and the *French* are the more obliged to acknowledge that power of the Popes, that there is no Kingdom in Chriſtendom where ſo many Regular Benefices are Erected in *Commendum*, as in *France*. Now ſeeing *Commendums*, in the manner that they are at preſent eſtabliſhed, more for the advantage of private perſons, than benefit of the Church, are altogether contrary to the Canons; none but the Pope can confer in *Commendum*, becauſe he only can diſpenſe with the Canons, as well in reſpect of the incapacity of perſons to whom *Commendums* are given, as of incompatibility of Benefices, in which the Commendataries are inveſted. And therefore Benefices in *Commendum*

*Commendums* depend on the Pope.

*Commendum* are in some manner reserved to the Pope, because they subsist upon a special Priviledge, which can be granted by none but him: And when the *Commendum* is void by the death of the Commendatary, it is not to be judged vacant by his death, but as it was vacant before the *Commendum*, which brings no alteration in matters. However, the Pope does still give the same Benefice in *Commendum* by a Priviledge that he continues on; so that it may be said, that the Priviledge or Dispensation hath wholly derogated from the Canon Law, which only subsists in name, and the Dispensation stands for Law as to the effect. In the mean time, though they who posses *Commendum* have not obtained them but by Priviledge or Dispensation, yet they still enjoy them, and have all the Titles, Profits and Honours, as if they were Titulars, inasmuch as by the Bulls of *Commendum* the Commendataries are subrogated into the rights of the Titulars, and the terms are always used, which import that the power of the Commendatary is the same with that of the Titular, to whom he is substituted: *Curam Monasterii*

The Rights of Commendatary Abbots.

*sterit ac regimen & administrationem tibi in spiritualibus & temporalibus plenarie committendo.* The Pope gives in some manner by his Bulls the Investiture both of the Spiritual and Temporal, and grants the Commendataries liberty to dispose according to their pleasure of the Profits of the Abbeys, after they have satisfied the Charges which are always expressed in the same Bulls: *De residuis fructibus, reditibus & proventibus disponere & ordinare potuerunt ac debuerunt.* And to make it appear that the Modern *Commendums* are different from the Ancient, which were established in favour of Churches, and not of Persons, the Popes add in their Bulls, that they give the Commendataries power to dispose of the Profits of their *Commendums* for their own use, that they may live more commodiously, nay and according to their Quality: *Ut statum tuum juxta gradum tuæ nobilitatis decentius tenere valeas, de alicujus subventionis auxilio providere volentes, &c.* This is not the place to examine whether the Popes can attribute to themselves so great an Authority, which seems to overthrow all the

Discipline

Diſcipline of the Church. I only ſpeak, at preſent, of what is in practice, and of the power that the Popes have in *France*, where the Bulls, whereof I have given ſome abſtracts, are received and authoriſed by cuſtom. And for that reaſon alſo, the Canoniſts ſay, that the Titles of Benefices are only of poſitive right, & that ſo, the Popes who have abſolute power over that right, eſpecially when it hath been voluntarily eſtabliſhed by them, may diſpenſe with it as they pleaſe, and in favours of whom they will. On this principle are grounded the Diſpenſations which are obtained from Popes, for poſſeſſing ſeveral Benefices, and that they daily derogate from the nature and quality of Benefices in favours of private perſons. But after all we muſt ſtill ſuppoſe the Maxime which we have already obſerved, that this great power of Popes cannot be executed in *France*, if the King conſent not to it; and beſides, that the Court of *Rome*, hath no power over the Poſſeſſory right of Benefices.

X. The Popes give not only Benefices in *commendum* to Clerks, diſpenſing

ſing both with their Age, and other Qualities requiſite; but they diſpenſe alſo with the Clerkſhip of Children as yet in the Cradle, until they have attained the Age of taking the Tonſure. It is enough to declare, that the Child is deſigned for a Church-man: *Infantem qui, ut accepimus, in ſecundo vel tertio ſuæ ætatis anno conſtitutus, & ad vitam Eccleſiaſticam agendam deſtinatus exiſtit.* But ſince no man can enjoy a Benefice, but he that is a Clerk; and that on the other hand, the Child is not as yet of Age, the Popes uſe theſe terms in their Bulls: *Eidem Infanti, cum primum Clericali charactere ritè inſignitus, & in ætate legitimâ conſtitutus, ſeu alias ex conceſſione & diſpenſatione Apoſtolicâ ad Monaſteria obtinenda capax & habilis fuerit, per eum, quoad vixerit, tenenda, regenda & gubernanda, ita ut ex nunc, prout ex tunc, pro eo affecta & deſtinata ſunt ac eſſe cenſeantur, &c.* Then the Pope, in the ſame Bull, names a Steward, who ſhall take care only of the Temporal, until the Child be grown up and ſhaven. N. *Adminiſtratorem Monaſteriorum in temporalibus ſolum, donec prædictus Infans charactere Clericali in-*

*ſignitus fuerit, & Monaſteria ſibi per nos vel Succeſſorem noſtrum Romanum Pontificem pro tempore exiſtentem, commendari obtinuerit.* It appears by theſe words, that the Child is not as yet properly eſtabliſhed Abbot Commendatary by the Bulls, becauſe he is not as yet a Clerk; but that the Abbey is only aſſigned to him, and that in the mean while he ſhall enjoy the Profits of the Benefice, as if he were actually inveſted in it, and that becauſe the Pope by his Bulls gives him the right.

Of Unions. XI. Though Ordinaries may unite ſmaller Benefices, yet it only belongs to the Pope to annex Benefices which are called Conſiſtorial, nay and many times application is made to him for all ſorts of Unions. That Power of the Pope, of uniting all ſorts of Benefices, proceeds from the fulneſs of his Authority; whereas that of Ordinaries is limited. Nevertheleſs heretofore they enjoyed that Right. But we have already obſerved, that we ſpeak only here of the New Law, in the manner that it is at preſent in force in *France*, without examining the ground of it, and if it be contrary to the Ancient Canons. It is not

not, for all that, to be imagined that the Pope is ſo much Maſter of Unions in *France*, that he can make them at his pleaſure, and without lawful cauſe: For the Unions which are commonly called perſonal, and only made during the lives of ſome perſons, are not admitted there, becauſe ſuch kinds of Unions are not for the Benefit of the United Churches. It is then neceſſary to make Unions lawful, that they be grounded on true cauſes, and not upon pretexts? Otherwiſe they are null, conform to the Decree of the Council of *Conſtance*, which reſcinds Unions made by the Pope (1) if they be not ſupported by good reaſons. It is not ſufficient, for all that, that the Pope in the Bull of Union make uſe of theſe words, *Et ex certa ſcientia noſtrâ*: But he ought to direct to ſome Body upon the place a Reſcript of Delegation *ad effectum uniendi*. That information may be had of the uſefulneſs of the Union. Beſides, thoſe who are concerned in the Union, and eſpecially the Patrons of Benefices muſt be cited, who ought to be heard, becauſe Union is a kind of Alienation for ever, which deprives the Pa-

(1) *Si non ex rationabilibus cauſis & veris factæ fuerint, licet Apoſtolicæ ſedis auctoritas interveneri.* *Seſſ.* 43.

tron of his Right. There are many other Formalities to be observed, for making Unions valid in *France*, where in reality the plenitude of the Popes Power is acknowledged; but still with reservation of the liberty of limiting it according to the Laws of the Kingdom. And upon that ground the Parliaments insist when they rescind Unions that want the Formalities, and declare them abusive. The Council of *Trent* (1) hath also declared, that Unions made within 40 years should be null, unless they had been made in presence of the Ordinaries, for just reasons, and those who were concerned cited. But by the addition of these words, (2) if the Holy See hath not declared otherwise, it renders the Pope absolute Master of Unions; which is not received in *France*, where no regard is had to the Prescription of forty years; for remedy may be had even after an hundred years against an Union that hath not been made in Form, if we believe the *French* Practitioners in Law. The Council of *Trent* however is not altogether repugnant to that Custom. It will have no respect to be had to the Prescription of forty years, if the Bulls of

The Popes Power limited in *France*.

(1) *Sess. 7. Can. 6.*

(2) *Nisi aliter à sede Apostolica declaratum fuerit.*

of Union have been ſurreptitious or obreptitious: That is to ſay, if the Information that hath been given to the Pope, be not found to be true; and that is common to Apoſtolick Bulls and Reſcripts, where that clauſe is always ſuppoſed, (1) if the Petition declare the truth.

(1) *Si preces veritati nitantur.*

XII. There is another kind of Union that belongs alſo to the Pope alone, to wit, the ſuppreſſion of one Order for uniting it to another, or the Diſunion of two that had been united. Yet that cannot be done without the conſent of the King.

XIII. The Deciſion of Cauſes which are called the greater, for inſtance, the Depoſition of Biſhops, is reſerved to the Pope, who, nevertheleſs, judges not of them at *Rome*, but appoints Judges in *France*; and he is not obliged to delegate a certain number of Biſhops, as ſome have pretended, nor to chuſe the Comprovincials of the Biſhop who is accuſed. It is in his power to delegate *in partibus* ſuch Commiſſioners as he pleaſes, provided they be of the Kingdom, and accepted by the King.

The judging of Biſhops.

The Ancient Right of Metropolitans

and Comprovincials is now out of doors, and Councils are no more called for that effect. The Pope then, does all now-a-days, by means of his Briefs, Bulls and Reſcripts, which, nevertheleſs cannot be of force without the Kings Permiſſion. And therefore it is that the Depoſing of Biſhops in *France* depends abſolutely on the Pope and King. The Pope names Commiſſioners to be Judges of the Proceſs, and the King accepts them. I know a great many oppoſe that in *France*; but it is in vain to object Law againſt matters of fact and examples, when the Queſtion is about Diſcipline. I ſhall ſay nothing of Ancient Cuſtoms, becauſe I treat only here of what is practiſed at preſent.

The Power of Legats in *France*.

Having ſpoken of the Popes Power in *France*, in reference to beneficial matters, it will not be amiſs to ſay ſomewhat of the Power of his Legats and *Nuncio*'s. The Power of Legats which are called *à latere*, is very great, becauſe they are, as it were, the Popes Ambaſſadors, and repreſent his Perſon at the Courts of Princes, to whom they are ſent about Extraordinary Affairs. Their Inſtructions are at length ſpecified in the

the Letters which the Pope gives them; but they are not put in Execution, until the King hath approved the Legation: And beſides, the Kings Officers do not Regiſter the aforeſaid Letters of Legation, but with the Modifications and Reſtrictions that are added to them according to the pleaſure of the King, and the Liberties and Cuſtoms of the Kingdom. The Legats then have almoſt the ſame power in all that concerns Benefices, as the Popes whom they repreſent have; and therefore they are very troubleſom to the Ordinary Collators during the time of their Legation, which laſts as long as the King pleaſes. There are nevertheleſs, ſome things which they cannot perform without ſpecial Orders from the Pope, ſuch as are the Tranſlations of Biſhops. Nor can they receive Reſignations *in favorem*, unleſs that be expreſly mentioned in their Inſtructions, and not limited or abrogated in the Reſtrictions that have been made of them; and therefore in that caſe the Bulls of their Legation, and the verification of them in Parliament, muſt be conſulted. Mr *Doujat* hath Printed ſome of them in his Col-

lection, and amongst others that of Cardinal *Chigi*, which may inform us of their power in *France*, where they exercise both the one and other Jurisdiction, that is to say, both the voluntary & the contentious, but still in Quality of the Popes Delegats, & therefore their Jurisdiction ceases, if the Pope happen to die during their Legation. Besides these Legates *à latere* who are but rarely sent into *France*, there is another Legate *à latere* at *Avignon*, who exercises his Jurisdiction in the City of *Avignon* and County of *Venisse*, In the Provinces of *Vienne*, *Arles*, *Embrun*, *Aix*, and *Narbonne*. That Jurisdiction is commonly given to a Cardinal, who hath a Sub-Delegat or Vice-Legate who discharges all the duties of it.

The Power of *Nuncio*'s in *France*.

As to the *Nuncio*'s in *France*, they have no Jurisdiction; they are looked upon rather as the Popes Envoys for Civil matters, than as Church-men. Nevertheless there is a Custom introduced, which hath been many times, and on several occasions condemned, to wit, that the Popes *Nuncio* in *France*, receives attestations *de vita & moribus*, whereby he takes information of

of the manners of thoſe who are nominated by the King to Conſiſtorial Benefices. But that is an abuſe introduced by the very ſame perſons that have been nominated by the King. For, fearing that their Bulls might not be expeded at *Rome*, they cauſe an atteſtation *de vita & moribus*, to be made before the *Nuncio's*; whereas that atteſtation ought to be given by the Biſhop of the place where the perſons named to Benefices reſide. Afterward they might be recommended to the *Nuncio*, as the Popes Miniſter in *France*; which is ſometimes practiſed even by the Kings order. But private perſons have had their recourſe to the *Nuncio* for their ſecurity, and that Cuſtom is obſerved at preſent, notwithſtanding all the Remonſtrances that have been made to hinder that Juriſdiction of *Nuncio's* in *France*.

Of Cardinals.

It remains now that we ſpeak of the Cardinals of the Court of *Rome*, and of their Priviledges: But ſeeing theſe Priviledges reſpect their private perſons, rather then the right of others, that article may be omitted; nor ſhall we touch at it but by the by. The name

name of Cardinal did not in the beginning ſignify a particular dignity, as it does at preſent, but only denoted the difference of Churches and Employments: For Inſtance, the Canons of Cathedral Churches were for moſt part called Cardinals in *Italy*, to diſtinguiſh them from the Eccleſiaſticks of other inferiour Churches. The ſame name was alſo given to Prieſts, Deacons, and even to Subdeacons, when there was occaſion to diſtinguiſh them from the lower Clergy: But it was a Title much inferiour to the quality of a Biſhop: And therefore when one was made a Biſhop he retained no longer the Title of Cardinal. Matters are at preſent much altered; The dignity of Cardinal now a days, is the next to the Papacy, and they are in reſpect of the Pope, as Senatours, or Councillors, are in relation to him that preſides in the Senate. Nevertheleſs ſince the Papacy is become Monarchical, the Pope takes their advice meerly for Ceremony, but acts according to his pleaſure. He makes uſe ſtill of theſe Terms, *De conſilio fratrum*, but it is moſt commonly to ſecure his relations

tions after his death, eſpecially in regard of the Revenues of the Apoſtolick Chamber, which the Popes diſpoſe of too abſolutely, the Cardinals not daring to oppoſe them. That which renders the Cardinals more conſiderable than all other Church-Men is, that they chuſe the Pope, and may themſelves be choſen. They have ſtept into the rights of the Ancient *Roman* Clergy, to whom it belonged to chuſe their Biſhop, in the ſame manner as was obſerved in other Churches. Now, ſince the Juriſdiction of the Pope is much augmented by the New Canon Law, the Dignity of the Cardinals alſo who are his Councillors, is become greater, and that they may be honoured according to their dignity, they have many Priviledges granted them, which exempt them from the common Laws and Cuſtoms.

They have ſix whole Months for beſtowing Benefices whereof they are the Collators, without any fear of being prevented by the Pope, who hath in their favours diſpenſed with his right of Prevention. Beſides, the Pope who daily derogates from the Rule *de viginti*

*ginti diebus* to favour *Resignees*, does never derogate from it in prejudice of Cardinals in respect of Churches whereof they are the ordinary Collators; and that is a Priviledge singular to them. Neither are they subject to the Indults or Priviledges of the members of the Parliament of *Paris*: So that they are not obliged to bestow upon the *Indultees* or Priviledged the Benefices whereof they are the Collators, because they have a Grant from the Pope, which gives them power of disposing of their Benefices to whom, and in what manner they please. Nevertheless the Parliament of *Paris* hath sometimes pronounced Sentence contrary to those Priviledges of Cardinals, and hath favoured the *Indultees*, by virtue of the nomination of the King, who they thought ought to be preferred before the *Indultees* of Cardinals. In fine, the common Rule, which says that Secular Benefices should be given to Seculars, and Regular to Regulars, is of no force in respect of Cardinals who (1) in that quality can receive all kinds of Benefices.

(1) *Habent os apertum ad omnia Beneficia.*

To have explained the right of the Popes

Popes in *France* in reſpect of Beneficial matters, is not ſufficient to diſcover fully wherein the ancient Canon Law is abrogated, which gave Biſhops abſolute power in the Collation of Benefices; we muſt beſides that examine the right of other Collators, and Patrons whether Eccleſiaſtick or Laick; In a word, it is neceſſary to know the rights of all who are in preſent poſſeſſion of providing to Benefices, in what manner ſoever it be. It would ſeem that none have more reaſon to challenge that Right, than the Chapters of Cathedral Churches; for as heretofore they made but one body with the Biſhops, and were of their Council, ſo they had ſome ſhare in the Juriſdiction. Wherefore, when the Revenues were ſeparated, at the ſame time the Juriſdiction was divided, eſpecially the gratuitous Juriſdiction, or the Right of providing to Benefices; and I take that to be the true reaſon why Chapters are at preſent the Collators of ſome Benefices ſeparately from their Biſhop. They have even made certain Laws among themſelves, which are different according to the diverſity of places. Every Canon preſents

The Rights of Chapters.

presents by turn to Benefices that become vacant in his week, or in the time that hath been allotted him in the Dividend which they have made among themselves. Besides that, dignified Canons can provide to Benefices that depend on their Dignities, whether in particular, or joyntly with other Dignitaries; wherein the Custom observed in every Chapter is followed. Care is to be taken though, that all sorts of Customs be not authorized; for it may be, that Canons have made Agreements among themselves, which are prejudicial to the Rights of private persons; and there are but few that mind that Bishops cannot call into question that Right of Chapters, since they have agreed on both sides by Transactions which were in their power to make. But that hath given occasion to a very great corruption, which hath established in the Church Benefices without any Employment: For the Canons are not only separated from their Bishops, but they have, besides, every one taken his Revenue in particular, and minded the management of it. This is the cause that many Offices which were necessary whilst

The Original of Personages and Dignities without Employment.

whilſt the Revenues were in common, are become uſeleſs; and inſtead of ſuppreſſing them, they are erected into Benefices, which are called Dignities, that is to ſay, *Sine-Cures* or Benefices without Office. I ſhall here give ſome Inſtances of them, that the Original of theſe Dignities or Benefices may be known, of which the Titulars for moſt part are uncertain whether or not they be obliged to reſide on their Benefices. I reckon then amongſt theſe Dignities, the Provoſtſhips of St. *Martin* of *Tours*, which are pretty numerous. Theſe Provoſtſhips were heretofore poſſeſſed by the Canons of the Chapter, who were choſen to take the care of the Temporal of the Church: And ſeeing the Revenues of that Church were in ſeveral places, the care of them was committed to different perſons, who had ſeverally the management of the Rents of their diſtinct Quarters; and becauſe of that, they were called *Præpoſiti*, whence the name of Provoſt is derived. But ſince the Canons took the care of their Rents every one in particular, theſe Offices are become uſeleſs; nevertheleſs they are ſtill retained, and are now called Dignities

Dignities, or ſimple Benefices, whereof the Titulars cannot be obliged to Reſidence, as heretofore they were, becauſe the obligation to reſide proceeded not from the Office of Provoſt, but of the Canonſhip which they enjoyed with their Provoſtſhip, that was not then a Benefice, but meerly a Commiſſion or Office. And in this manner alſo ought we to conſider the dignity of Treaſurer in ſeveral Cathedrals of the Kingdom, which in all likelyhood, was but an Office that conſiſted in taking care of the Revenues of the Church, and is at preſent a Benefice without Office, which is called a dignity of honour, becauſe it is only by Cuſtom that it hath the name of dignity, there being none but the Titles of Arch-Prieſt and Arch-Deacon that are dignities of right, by reaſon of the Juriſdiction which they have retained.

It is the ſame with all other dignities or *Sine-cure* Parſonages, & therefore I ſhall inſiſt no more on that Subject. I ſhall only obſerve, that ſeveral Perſons do in ſome manner enjoy two Benefices, though they be not reckoned amongſt thoſe who poſſeſs plurality of Livings

livings. The Deans, for Instance, of Cathedral Churches, and the chief Dignitaries of Collegiat Churches, have double the Revenue of the other Canons, though they be no more in effect, but Canons as the rest are, and have nothing over them but a Prerogative of honour. But Custom, which hath made that and many such other practices familiar to us, is the cause why they are not reckoned in the number of those who have several Benefices; besides, they may alledge for their justification, the words of St. *Paul*, who saith. *That the Elders who Rule well are counted worthy of double honour.* 1 Tim. 5. 17. After all, if the Chapters challenged no more to themselves in Beneficial matters, but the rights whereof we have been speaking, Bishops would have no cause to complain of them: But there are some who have attempted upon the Jurisdiction of the same Bishops, and pretend to an Episcopal Jurisdiction, as well as they. You shall see Canons who have rather out of vanity, than necessity, a great *Vicar*, an Official and other necessary Officers, for exercising Episcopal Jurisdiction, as

if they had a Diocese to govern. Most part of Chapters, besides, pretend to be exempted from the Jurisdiction of their Bishops, and have a little Territory depending on them, in regard of which they exercise the functions of Episcopal Jurisdiction, and hold the place of inferiour Ordinary Prelates, which are mentioned in the Decretals.

The Original of the Rights of Chapters.

To know upon what ground the Canons build that Episcopal Jurisdiction, which gives them power of conferring several Benefices, we are to observe that all the Rights and Priviledges of Chapters can only derive their Original from the Bishops whose Brethren the Canons call themselves. Before their Rents were separated they governed the Churches jointly with the Bishops: And so it is not to be thought strange, that after their separation they have retained part of the Jurisdiction that belongs to them by the Canon Law, if they be in possession of it. And therefore (1) Mr. *Charles du Moulin* affirms that the Collation of Canonships and Prebends of Cathedral Churches belongs by common right to the Bishops and Chapters. It is true, that seems to

(1 *Car. Moulin Reg. de Infer. resign.*

establish

eſtabliſh ſeveral Heads in one and the ſame Dioceſe, but ſeeing theſe Heads are ſubordinate to Biſhops, Canoniſts do agree, that beſides Biſhops, inferiour Prelates may be owned for Ordinaries, and they think that (1) under the name of Biſhop inferiour Prelats who are in poſſeſſion of Epiſcopal Juriſdiction are likewiſe to be comprehended. According to that maxim, Chapters may be Ordinary Prelats, *prælati ſeorſim ab Epiſcopo*; And the New Law is the more favourable to them, in what concerns the Collation of Benefices in full right, that Collation (2) belongs not at preſent to the Orders, but to the Juriſdiction. So that, reſerving ſtill to the Biſhop all that concerns Orders, the Chapters may perform the other functions that reſpect Juriſdiction.

(1) *Nomine Epiſcopi, Inferiores Jura Epiſcopalia habentes, in his quæ Juriſdictionem concernunt, comprehenduntur.*

(2) *Non eſt Ordinis, ſed Juriſdictionis.*

It is true that according to the Ancient Canon Law, the Clerks of Cathedrals, who have ſince been called Canons depended on their Biſhops, as well as the reſt of the Church-men: But that hindred them not from being the Biſhops Counſellers, who in the beginning did nothing conſiderable without the Counſel, nay even the conſent of

their Clergy. Bishops, nevertheless, at present question most part of their rights, and accuse the Canons (1) of usurpation. The Parliaments favour the Bishops, because they are perswaded that the Jurisdiction which is called Episcopal, belongs by the Canon Law to the Bishop alone, and that the Canons can have no ground but the Exemptions and Privledges which they have obtained from Popes, or which they enjoy by virtue of transactions made with Bishops, who could not do prejudice to the rights of their Successours in what concerned Episcopal Jurisdiction, because it cannot be communicated to others than Bishops, and that in every Church there is but one Episcopal Chair, (2) the Seats of Canons being but Benches in the Quire for the performance of Divine Service. But in my Judgment, Chapters which are founded on the Canon Law, have not Justice enough done them in that particular; and the Seats of Canons or Ancient Clerks were not in the beginning bare Benches for singing in the Quire, but Chairs of Jurisdiction, since the Fathers give them the name of Senators, comparing

(1) *Usurpatæ alienæ Jurisdictionis.*

(2) *Nulla est cathedra nisi Episcopalis.*

comparing the Aſſembly of a Biſhop with his Clergy to a *Senate*. The tranſactions therefore, that they have made with their Biſhops ought to be conſidered, as agreements which they had power to make, and not as mere condeſcenſions of Biſhops in favours of Chapters. Beſides, the Exemptions that Chapters have obtained from Popes, ought to be preferred before all other Exemptions, becauſe theſe Priviledges are very many times but a confirmation of their right. I know that the Council of *Trent* hath derogated from the tranſactions of Chapters with their Biſhops, unleſs they have been confirmed by Popes, and that it hath alſo annulled their exemptions: But beſides that the Council of *Trent* is not received in *France*, where Exemptions grounded on good Titles are ſtill in force, it may be ſaid that the Biſhops in that Council have not done the Canons Juſtice, and that as to the Concordats and Agreements which they have made with Biſhops concerning Juriſdiction, they had right and power to make them. And therefore it was not in the Biſhops power to annul the

same, but only to ordain a review, that it might be examined whether any thing had been done in them contrary to the Canons, and whether they have not been Simoniacal.

The Rights of Chapters during the Vacancy of the See.

If the Rule of the Canon Law were exactly observed, it would be easie to regulate the Rights of Chapters during the Vacancy of the See; because the Jurisdiction being common to the Bishop and Chapter, it must needs be that the Chapter succeed to the whole Jurisdiction after the death of the Bishop, and that by consequent it present to all Benefices until the See be filled. But the contrary is practised; for the Benefices which the Bishop confers with his Chapter, are distinguished from the Benefices to which he presents alone. In regard of the first, as the Chapter bestows them joyntly with the Bishop, so does it retain the Right of conferring them alone, during the Vacancy of the See: But it dispossesses not of others, as it is expresly mentioned in the 31th Book of the Decretals (1) *Cum nusquam inveniatur cautum in Jure, quod capitulum, vacante sede, fungatur vice Episcopi in collationibus*

(1) Tit. 9. cap. 2.

*bus præbendarum*: That is to be underſtood of Collations that belong to the Biſhop alone, and it is even extended to thoſe where he would be obliged to take the Advice and Conſent of his Chapter. The reaſon of that practice is, becauſe the Right of conferring paſſes then to the next Superiour; and it cannot be ſaid, that the Chapter is ſuperiour, nor even equal to its Biſhop, in the Benefices to which the Biſhop preſents alone. However, I think, if matters had been examined to the bottom, the Chapters might confer all Benefices, *ſede vacante*, becauſe then they would re-enter into their Ancient Right after the death of their Biſhop. It hath not been minded, that that Decretal was made for the profit of the Pope, who happens often enough during the Vacancy of the See, to be immediate Superiour; and ſo in ſome ſenſe he becomes Ordinary. There is in the Bullary a Conſtitution of *Pius* V. whereby he reſerves to himſelf all the Benefices depending on Biſhops *ſede vacante*; but moſt of the Conſtitutions in the Bullary are not received in *France*. It is certain that Chapters are in place of the Biſhops

during the Vacancy of the See, for all Collations which are called necessary; and therefore they collate upon the Presentation of Patrons, and the Nomination of Graduats. *Vacant Cures*, though they be in the Collation of the Bishop alone, ought to be reckoned in the number of necessary Collations: But many are not of that Opinion as to this last Right, for the reasons which I mentioned before. It belongs to the Chapter also to confirm not only those who are presented by Patrons, but those also who are chosen. The reason which many able Canonists give for authorizing that Right of Chapters, is because there is difference to be made betwixt free, and necessary Collations; (1) the first are favours that absolutely depend on the Bishop; but in the other he has not the same power, seeing he cannot reject those who have been chosen, or presented, if they be found capable. It would be then necessary, according to that Maxim, to reserve all the Collations which are called free, to the Bishop who is to succeed; but that is not observed in *France*, where the King hath his Right of the *Regale*, and presents

(1) *Conferre est liberæ voluntatis; at instituere præsentatum, aut confirmare Electum, est necessitatis.*

preſents to all Benefices that have no Cure of Souls, until the See be legally filled; and for other Benefices they are provided to in the manner as I have juſt now mentioned.

The Rights of Patrons.

We are now to explain the Rights of Patrons, which have alſo derogated much from the Ancient Right of Biſhops, on whom all the Churches of their Dioceſes depended abſolutely, and without any reſtriction. They are called Patrons of a Church, who have founded, or endowed it; ſo that there may be ſeveral Patrons of one and the ſame Church, becauſe of different Benefits, for which the Church is obliged to different perſons, whether for having built it, or for having beſtowed the Ground whereon it is founded, or for having allotted Lands or Poſſeſſions, for Maintenance of the Miniſters that ſerve the Cure of the ſame. All theſe things acquire to the Benefactors a Right which is called the Right of Patronage; and though it doth not clearly appear by the Deed of the Foundation, that they have reſerved to themſelves that Right, yet ſtill they have it, provided they have not renounced the ſame.

The

The Patrons enjoy several Honours and Priviledges by virtue of their Patronage; the chief is the Right of presenting to the Bishop, or other Ordinary Collator Clerks to be provided to the Benefices whereof they are the Patrons: And if they whom they present be capable, the Collator cannot refuse them; he is obliged to give to the Presentees Collation or Institution upon the Letters of Presentation: And if it happen that slighting the Patrons, they give the Benefices to others, the Provisions are null. Now, that Presentation which is the chief advantage of Patronage, hath been granted long before the Establishment of the New Law, and of Benefices, to those who founded Churches, and maintained Ministers: For Bishops Ordained for the same Churches, those who were recommended to them by the Founders, when they were capable of the Ministry to which they were called. That is expresly mentioned by *Justinian* in the Novel 126. *chap.* 18. where it is said; *Si quis Oratorii domum fabricaverit, & voluerit in ea Clericos ordinare aut ipse, aut ejus hæredes, si expensas ipsis Cle-*

*Novell. Justinian.*

*ricis*

*ricis miniſtrant, & dignos denominant, denominatos Ordinari. Si verò qui ab eis eliguntur, tanquam indignos prohibent ſacræ regulæ ordinari; tunc ſanctiſſimus Epiſcopus quoſcunque putaverit meliores ordinari procuret.* The Ancient Canons make mention alſo of that Right of Nomination granted to Patrons or Founders of Churches.

*Gratian*, who (1) alledges the Canon of the firſt Council of *Orleans*, to prove that all the Churches of every Dioceſe are in the power of the Biſhop (2) makes in the ſame place ſeveral Reſtrictions in favours of thoſe who have founded Churches: And amongſt others he aſſerts their Right of Nomination upon the Authority of a Council of *Toledo*. And therefore Biſhops or other Ordinary Collators can never derogate from the Right of Patronage, though they look upon it as a kind of ſervitude annexed to Benefices, which, for all that, depend wholly on them, becauſe of the Right of Collation or Inſtitution which belongs to them. Yet that hinders not Patrons from conſidering it as an honourable Right: And though it be the Inſtitution or Collation that properly

(1) 16. q. 7. c. 10.

(2) 16. q. 7. c. 32.

perly inveſts the Beneficiaries in their Benefices, *quia præſentatio non eſt pars ſubſtantifica Inſtitutionis, ſed eſt tantum quædam ſervitus beneficii*; yet it is always true that the Inſtitution or Collation of Biſhops, is not altogether in their own power in reſpect of Benefices that are in Patronage, becauſe they are limited to give the Inſtitution to thoſe who are preſented to them by the Patrons.

There are two ſorts of Patrons, Laick, and Eccleſiaſtical; and though the right of Nomination to Benefices whereof they are the Patrons, be common to both, yet they differ in many things, and Lay-Patrons have even ſome advantage over the Eccleſiaſtical.

The Priviledges of Lay-Patrons.

I. The Pope nor his Legate can never derogate from the right of Lay-Patrons and they who favour the Court of *Rome* ſay only that the Pope might abſolutely, if he would, do it, ſeeing he is Maſter of all Benefices, but that he never will. And therefore neither the Pope nor his Legate, can ever prevent Lay-Patrons, who have four Months entire for preſenting to Benefices. 'Tis true Eccleſiaſtical Patrons have ſix Months,

Months, for providing to the Benefices of their Patronage; but that is uſeleſs to them in *France*, where the Prevention of the Pope takes place. In *Normandy* Lay-Patrons have full ſix Months to preſent in, as well as Eccleſiaſticks: But that Priviledge is founded on Cuſtom, and not on Law, that only allows four Months to Lay-Patrons, which being expired they loſe their right of Preſentation for that time, the ſame being devolved on the Ordinary, who beſtows the Benefice on whom he pleaſes.

II. The King cannot derogate from the right of Lay-Patrons by his right of the *Regale*, becauſe the *Regale* gives him no more right, than the Papacy gives the Pope. Now it is certain, the Pope, as we have obſerved, can do nothing in prejudice of Lay-Patrons: On the contrary, the King can derogate from the right of Eccleſiaſtical Patrons during the *Regale*, and confer the livings that depend on them, without any neceſſity of having their conſent: And as the *Regale* gives the King right to receive Reſignations *in favorem*, in the ſame manner as the Pope enjoys it, ſo upon

upon such Resignations, he can confer Benefices Vacant within the *Regale*.

III. The Lay Patron has liberty to alter. If he hath presented an unworthy person, he can name another; which is not granted to an Ecclesiastick, who cannot accumulate Presentation upon Presentation, as a Lay Patron can. The reason of that difference is chiefly, because the ignorance of a Lay Patron is to be excused, but not of an Ecclesiastick, who, in such a case, forfeits his right, for that time, after the first Presentation.

IV. The Ordinary cannot admit of Presentations without the consent of the Lay Patron: Whereas he may do it without the Ecclesiastical Patron, from whose Right he can derogate in case of Permutation, but not in pure & simple Demissions; for the Benefice being then vacant, the Ordinary cannot confer it, but upon the Presentation of the Patrons, whether they be Ecclesiasticks, or Laicks.

V. A Benefice in Lay-Patronage cannot be burdened with a Pension or Annuity and Mr. *Charles Du Moulin* is of the opinion, that the Popes Rescript cannot

cannot be put in execution, unleſs the Patron conſent to it, or that clauſe be added, *Si tamen Patroni conſenſus accedat.* But ſeeing the Pope can Derogate from the right of Preſentation of Eccleſiaſtical Patronss by conferring in full right Benefices that are in their nomination; he can upon ſtronger reaſon, Authoriſe by his Reſcripts, Penſions ſetled upon the Benefices of their Patronage, without any neceſſity of having their conſent.

Whence cometh the diſtinction of Patronages.

After all, it will not be amiſs to obſerve, that the diſtinction of Patrons Laick and Eccleſiaſtical, is not taken from the difference of perſons; for a Church Man may be a Laick in reſpect of his Lands and Inheritance, to which the Patronage is annexed: But a Lay-Man cannot be an Eccleſiaſtical Patron, becauſe Eccleſiaſtical Patronage is a right that belongs to a Perſon or Community, by reaſon of Benefices which they enjoy. In a word, Benefices are in Eccleſiaſtical Patronage, when they depend on a Church. I do not here examine, whether the Pope can diſpenſe with a Laick for enjoying a Benefice, and ſtill remaining Laick; in which

which case it would be true, that a Lay-Person might be an Ecclesiastical Patron. It is sufficient that we have examined matters according to the ordinary course of Law; and without any farther inquiry into the thing, it will be easy to distinguish these two Patronages, according to the Principles that we have laid down. We must, nevertheless, observe, That it many times happens Lay-Patronages, in process of time, to become Ecclesiastical; and that either by the terms of the Donation or by the Translation and Donation that Lay-Men make of their Lands and Lordships to Churches or Monasteries. In the Title of the Foundation of a Church, it is sometimes expressed that the Founders reserve to themselves the Right of Patronage, only for a certain time, and for a limited degree of Kindred; and then that failing, the Ordinary in full right confers the Benefices that were before in Lay-Patronage. Wherefore it is necessary that Bishops examine the Titles of foundations, which are sometimes qualified with restrictions in their favours. Besides, we find that Cathedral Churches and Mona-

Monaſteries enjoying a great many Lordſhips with Patronages annexed to them, theſe Patronages have changed their nature, being become Eccleſiaſtical by the Lords making of them over to Churches. We muſt nevertheleſs, except great Benefices, ſuch as Biſhopricks and Abbeys, which the Kings of *France* can never transfer to the Purchaſers of Crown *Lands*. The King can only transfer the Patronage of ſmaller Benefices with the Inheritance; and then the Patronage from Royal becomes Eccleſiaſtical, if it be given or transferred to a Church.

There ariſe great difficulties in *France* about Lay-Patrons who make profeſſion of the Reformed Religion. And ſeeing Proteſtants are not treated according to the Rigour of the Eccleſiaſtical Laws, which deprive Hereticks of their Eſtates, it would ſeem that ſince they are left in poſſeſſion of their Lands and Lordſhips, they ſhould alſo enjoy all the fruits and honorary Rights that are annexed to the ſame Lord ſhips eſpecially according to the Maxims of the New Law, which (1) places the Preſentation to Benefices in the number of

Of Huguenot Patronage.

(1) *Collationes ſunt in fructibus.*

Fruits. No man doubts but that Patronage is a real Right annexed to Lands, and that by consequent it follows them as being a fruit of the same. It would seem, then, that no regard ought to be had to the Quality of the person; inasmuch as the Right of Patronage is not personal, but real; and besides, the Presentation is but a servitude of the Benefice, and not a Spiritual Title. Nor doth the Presentation properly give the Benefice. But institution must be had from the Ordinary upon the letters of Presentation; and in that the Spirituality does really consist. The Ordinary may refuse those who are presented by the Patrons, if they be not capable; and so it remains always in the liberty of Ordinaries not to supply Benefices that are in Huguenot Patronage but with fit and able men. The Patrons, then, if they would, cannot abuse their Right, and it is impossible, that the Church can thereby receive any prejudice, if the Ordinaries discharge their duty.

These and many more reasons that might be brought upon that Subject, were the cause that Lay-Patrons professing

feſſing the Reformed Religion obtained heretofore an Order of Council, whereby they were allowed to nominate fit perſons, who in their place might preſent to the Benefices of their Patronage; but that is not now obſerved; for the Ordinaries, in full Right confer ſuch Benefices, ſo long as the Patrons make profeſſion of the Reformed Religion. And therefore it is fit we ſhould obſerve, that the Right of Patronage, which is real and united to the Land, is not loſt, but only dormant and in ſuſpenſe; ſo that if the Patrons happen to be reconciled to the Church, they enjoy their Right of Patronage, in the ſame manner as if they had never profeſſed the Reformed Religion. That Cuſtom is backt with good reaſons; and though the Right of Patronage be not properly Spiritual, it is, at leaſt, mixt, and it is a common ſaying, that it is *quid Spirituale annexum Temporali*. And that it cannot be Sold ſeparately, but only with the Land or Inheritance to which it is annexed. It is true, Patronage is a real Right; yet that hinders not but that it is exerciſed by a perſon. Now it is ridiculous, that a man

who believeth not in the Church, ſhould preſent to it a perſon for a Spiritual Right, and that that Right ſhould be granted upon his Preſentation. Grant that the Biſhop is free to accept or reject him who is preſented, and that he is the Judge of his capacity. That is not enough: For if the Canons prohibit the giving of a Benefice upon the recommendation of an Heretick, upon ſtronger reaſon, it ought not to be given upon his Preſentation. The Biſhop can only Judge of defects that are known to him, and it may be the Proteſtant Patron may preſent a very capable man, but who may have ſecret engagements with himſelf. It is not ſtrange to ſee Churchmen who have followed their ſtudies at the charge of Proteſtant Patrons, in hopes of procuring them Benefices of their Patronage, to the end they may comply with them, and do prejudice to the Rights of the Church. But theſe Artifices are ſo hidden, that few can come to the knowledge of them. And therefore Patrons who profeſs the Reformed Religion, have with reaſon been excluded from the Right of preſenting to Benefices which depend on their Patronage

Patronage. It may be doubted, whether Biſhops in defect of theſe Patrons, who are incapable of preſenting to Benefices of their nomination, ought in full Right to confer the ſame Benefices. It would ſeem, that that did belong to them by Canon Law, becauſe the Patronage which is a kind of ſervitude tolerated by the Church, ceaſing, the Biſhops enter again into their ancient Right. But on the other hand, ſeeing Lay-Patrons enjoy not the right of Patronage, but becauſe of their Lands and Inheritances, there is a great deal of appearance, that it belongs to the King who is their Soveraign Lord, to ſupply the defects of his Vaſſals, when they themſelves cannot exerciſe a Right that is annexed to their Fiefs; In the ſame manner as the King in *Normandy* has the Right of Wards, and that by virtue of that Right he is Patron in the place of the *Minors*, who have Lands with right of Patronage, until they be of age. However, It is certain that the Biſhops are at preſent in poſſeſſion of that right, and that they are grounded upon a declaration of the King, which they pretend to be in their favours. There happened lately

a Process betwixt the King and the Arch-Bishop of *Rouen* concerning the Cure of *Oinville*, which is in Huguenot Patronage, and to which both the King and Arch-Bishop had presented; which shews plainly enough, that the King had a mind to recover his right, having referred that matter from his Council to be examined in the great Council. After all, the Patrons professing the Reformed Religion, have found a device to preserve their Right of Patronage; For by a counterfeit Contract they sell their Lands with Patronages to some Catholick of their Friends or Relations; And so they remain Masters, unless the Fraud of their Contracts be discovered. But let us now come to Ecclesiastical Patronages.

The Original of Ecclesiastical Patronages.

Ecclesiastical Patronages derive their Original from the I. Council of *Orange*, where Bishops that found Churches out of their Dioceses, are permitted to present capable Persons to them, who are afterward to be ordained by the Diocesan Bishops. That Right hath past insensibly to all other Founders: And at length, regular Communities have also presented to Benefices depending

depending on their Monaſteries. In their favours the Rule hath been made, which bears that Secular Benefices ſhall be given to Seculars, and Regular to Regulars. By Law all Benefices ought to belong to Seculars, becauſe none but Seculars are by right capable of Eccleſiaſtick Employments, and that the Religious have only got into them by Priviledge and Diſpenſation. But ſince they have been permitted to poſſeſs Lands; Nay Fiefs and Lordſhips, they have had many Churches in their diſpoſal, which they have governed themſelves, or committed to Secular Prieſts. They commonly gave Pariſh-Churches to be governed by Secular Prieſts, allowing them but a very moderate Stipend; and had even the power to change them as they pleaſed. But at length they were forced to place Curates, or perpetual Vicars in their Churches, for preventing a vaſt number of Abuſes; and partly from thence we have the Cures to which they preſent in Quality of Patrons. As to Priories and other Benefices to which they nominate, they were at firſt but Adminiſtrations, or Manual Benefices, which, for that reaſon,

The Original of Priories.

ſon, were called Obediences, becauſe the Religious were employed in thoſe Offices by the command of their Abbots or Superiours, whom they were obliged to obey; and they continued no longer in the Employments, than their Superiours pleaſed. They had the name of *Præpoſiti*, or *Obedientiarii*, and their Care extended more to the Temporal than the Spiritual. If Lands lay remote from the Monaſtery, ſome Religious were to be ſent thither to take the care of them: And ſeeing Monks ought not to live alone, unleſs they were Hermites or Anchorites, they had Companions aſſigned them, of which one took the Title of *Præpoſitus*, and the places where they lived were called *Cellæ*, *Grangiæ*, *Obedientiæ*, to diſtinguiſh them from the Principal Monaſtery of which theſe Houſes were but Dependances. This is the Original of Priories, and other leſſer Benefices of Monaſteries, which in the beginning were Manual and in Rule. Nay, it ſeems even contrary to the Inſtitution of the Monaſtick life, that Monks ſhould properly poſſeſs Benefices in Title, in the manner that they are Eſtabliſhed by the New

New Law; for they are the abſolute Maſters of their Revenue, which is in ſome ſenſe contrary to the Vow of Poverty that they have made. In proceſs of time, many of theſe Priories have been conferred on Seculars, whether becauſe of the ſcandalous Lives of the Religious that poſſeſſed them, or for other reaſons; and by that means the Benefices are gone out of the Rule. Forty years poſſeſſion is enough to change the nature of Benefices. In the mean time the Monks who perceive that theſe Benefices are by their Foundation regular, uſe all poſſible Endeavours to recover them again, and ſpare no means to get them out of the hands of the Seculars who poſſeſs them, being perſuaded that they cannot commit Injuſtice nor Simony in regaining the Lands which they pretend belong to their Church. When Benefices are once in poſſeſſion of Monks, it is hard for them to return again to Seculars, becauſe, as we have obſerved before, after forty years poſſeſſion they become regular. On the contrary, it happens often, that Benefices poſſeſſed by Seculars, fall under Rule, becauſe Regular Communities

Communities compound with Seculars, by Pensions, Annuities, or other ways. We have then general Rules for distinguishing Benefices in Rule, from those that are not, to wit, forty years possession; and failing that Rule, all Benefices of their own nature, and by Canon Law, are Secular. Nothing but the Foundation can prove a Benefice to be in Rule; and then the Title of the Foundation derogates from the Ancient Canon Law.

The Right of Commendatary Abbots in the nomination to Benefices.

Though it be certain, that Religious, and Regular Communities present to many Benefices in Quality of Patrons, yet there is great difficulty, to know to whom that Right of Patronage belongs since the Establishment of perpetual *Commendums*: And there happen many suits upon that account betwixt the Commendatary Abbots and the Monks. Yet it is an easy matter to resolve all these difficulties, if we lay down some principles that cannot be questioned. We must not consider then the Modern *Commendums* as bare Consignations, but as real Titles, as all the Bulls of *Commendum* bear. If the *Commendums* were no more but bare Consignations,

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the Commendataries could not have, as is commonly ſaid, *Jus in re*, but barely the keeping, or *Cuſtodiam Commendæ*; and by conſequent they could not diſpoſe of Benefices; becauſe ſuch kinds of *Commendums* or Conſignations are only for a certain time. It is not ſo with the *Commendums* now in queſtion, becauſe they are *ad vitam*, and retain nothing but the name of *Commendum*, being in effect, real Titles, which give to Comendatary Abbots all the Rights which Regular Abbots enjoyed, to whom they have ſucceeded. That Principle, which is unqueſtionable, being ſuppoſed, it is plain enough to whom the Right of Patronage belongs, whether to the Abbot alone, or to the Monks Jointly with him. There needs no more for that, but to conſult the Right of the Regular Abbots of every Order. If the Conſtitutions and Cuſtom of the Order attribute to the Abbot alone the honorary Rights, there is no doubt but the Abbot *Commendatary* ought to enjoy the ſame Rights. If, on the contrary, the Regular Abbot cannot enjoy theſe Rights but with conſent of the Community, and that he be not the abſolute

ſolute Maſter of them; they muſt be divided betwixt him and his Community, in the ſame manner as temporal goods are: For then the Rule gives to the Monks the ſame power in reſpect of their Abbot; as the Canon Law gives to Canons in regard of their Biſhop. We muſt, nevertheleſs, take notice, that it is not enough to eſtabliſh the Right of Monks, that the Abbots have taken the counſel, or even the conſent of the Community, when there has been occaſion of nominating to Benefices, for many may have done that, without any obligation upon them from their Conſtitutions: But it muſt beſides, be made out, that their Nominations would have been null without the conſent of the Community. The reaſon of that Maxim is, becauſe the Canon Law and Popes Bulls give all the honorary Rights to Abbots; and ſo there is no derogating from them but for great reaſons. It is certain, the firſt Monks were entirely ſubject to their Abbots in all that concerned their Functions and Employments. St. *Benet* hath alſo reſerved to the Abbot that Superiority over the Religious: And when that

Order

Order began to receive Lands, and that it was neceſſary to give the charge of them to ſome Monks in particular, the Abbot alone gave them their Commiſſions which were at firſt but Adminiſtrations, though ſince they are become Benefices. I make no doubt but the Popes Bulls, which are very favourable to Commendatary Abbots, are founded on that Ancient Right of Regular Abbots: But as to what concerns Temporal goods, the ſame Bulls of the Pope do not allow them to be alienated, becauſe they belong to the whole Community, and not to the Abbot alone. And therefore when the queſtion is of ſelling or alienating any Lands or Poſſeſſions belonging to the Abbey, the Abbot is not then abſolute Maſter, but his Community muſt conſent to it. For the ſame reaſon Commendatary Abbots are obliged to divide the goods and Revenues of the Abbeys with the Monks or to give them Money to the value of their ſhare or Portion: And though they are very willing to reſt ſatisfied with a yearly penſion, yet they have ſtill the ſame Rights to the Lands and Inheritances.

ritances. It concerns them to have a care that they be not imbazeled in the hands of the Abbot, inasmuch as their Portion diminiſhing by the diminution of the Revenues of the Abbey, their Penſion would be leſſened at the ſame time. The Abbots themſelves cannot hinder the Monks from taking cogniſance of the Leaſes which they make of the Lands of their Abbey, and from having always an eye over their actions, becauſe they have the ſame right that the Abbots have of enjoying the Revenues of the Monaſtery.

Agreements betwixt Abbots and Monks.

That common Right of the Abbots and Monks in regard of the Temporal Profits of Abbeys has given occaſion to Agreements and Tranſactions that are made betwixt them for the partition of the ſame. In *France* the Revenue of the Abbey is divided into three parts, of which there is one for the Monks, one for the Charges, and a third for the Abbot. But the Abbots enjoy commonly two parts, becauſe they oblige themſelves to defray the charges; and if they neglect to do it, a third part of the Revenue may be ſequeſtrated, until it be done. Upon that foot, it is

eaſy,

eaſy to decide the difficulties that might ariſe betwixt the Abbot and Monks about the diviſion of the Revenues: There needs no more, but to give a third part to the Monks, and two thirds to the Abbot, who is obliged to the reparations of the Fabrick, payment of Tenths, and other Charges. As to the honorary Rights, they ought not to fall under a dividend, becauſe by the Canon Law they all belong to the Abbot alone, who may make them over either in whole or in part to his Monks. But that gratuitous Conceſſion does not prejudice the Rights of his Succeſſours, becauſe the Abbot can only diſpoſe during his life, of the Rights that ſubſiſt in his perſon; and the Monks cannot enjoy them after the death of him that hath granted them, becauſe that Conceſſion is no more in force. It is not the ſame as to Agreements or Tranſactions, becauſe all Tranſaction ſuppoſes the Right of two Parties who are agreed together; and ſo the agreement will always ſubſiſt in reſpect of the Religious, though the Abbot be dead, until it be broken off by his Succeſſour. In *France*, Abbots may break the Agreements

ments of their Predeceſſours, eſpecially if they think themſelves injured. We have many inſtances of that practice: And there ſeems to be reaſon for ſo doing, becauſe Abbots may make ſecret Compacts with the Monks; and take the advantage of ſuch, to the prejudice of their Succeſſours: And therefore the Abbots have right to break the Agreements of their Predeceſſours. It is a harder matter to diſſolve thoſe Tranſactions when they have been confirmed at the Court of *Rome*, and in the Parliaments, with cognition of the cauſe; for then they become real, and by conſequent oblige the Succeſſours. In that caſe, the Abbots cannot reſcind the Concordat or Agreement, till they have obtained a Reſcript from the Pope, and letters from the Parliaments upon a Bill preferred.

Farthermore, we are to take notice that many times the partition of the honorary Rights is inſerted in the Concordats with the diviſion of the Revenues and eſpecially the Preſentations to Benefices, as if that could be divided betwixt the Abbot and Monks. It is a vicious clauſe in the Agreements, becauſe

cauſe it is of the nature of a Concordat, that they who Tranſact have ſome Right to the thing for which they do Tranſact; otherwiſe it is not an Agreement, but a Conceſſion. This Maxim, which is undeniable, being ſuppoſed, it is eaſy to reſolve the difficulties that daily happen betwixt Biſhops and Religious communities during the Vacancy of the Abbatial See. The Ordinaries provide to Benefices that are vacant at that time, and the Monks alſo on their ſide, preſent; which daily occaſions great ſuits, and it ſeems that there is nothing as yet fixt and determined as to that. But according to the principle which we have laid down, there is no doubt but when the Religious Community preſents to Benefices jointly with the Abbot, they ought ſtill to preſent during the Vacancy, becauſe one of the Preſenters is enough in defect of the other. But when the Abbot alone nominates to Benefices, and he dies, the Ordinaries enter again into their Canonical Right, and confer in full power, becauſe the Patronage or Right of preſenting ceaſes by the death of the Patron.

To whom it belongs to preſent to Benefices during the Vacancy of the Abbatial See.

That right of Ordinaries, or of Religious

ligious Communities, is not to be called Devolution: For Devolution hath no place, but when there is a neglect on the part of Patrons or Collators; and then their Right is devolved upon the immediat Superiour. In the question we now examine, there is no neglect; and they who say that on those occasions the Right is devolved upon the Ordinary, or upon the Chapter of the Monks, speak very improperly. It is far better said, that the Ordinary, or Chapter of the Monks provide then to Benefices by the Canon Law, and their own Right. In vain do the Monks object to Ordinaries, their Concordats, or the Rights of their Chapter, because, as we have already observed, the Chapter hath no power *sede vacante*, but as to Benefices where they present jointly with the Abbot: And as to the Agreement or Concordat, there can be none but for what belongs in common to the Abbot and Monks. Now the Presentation to Benefices and other honorary Rights being only in the person of the Abbot, they cannot fall under a dividend, and by consequent no Transaction can be made about them. To this

this we may add, that Ordinaries have an acquired Right to all the Benefices of their Dioceſe, when there is no Patron; for then they confer in full Right; and ſo Abbots cannot give a Right which is not their own.

What we have ſaid of Commendatary Abbots, ought alſo to be underſtood of Priors, who have Monks in their Priories; for the Diviſion of the Rents ought to be made in the ſame manner. It is worth the obſerving, that amongſt the Religious there are two ſorts of Priors, to wit Conventual Priors, and Clauſtral. The Clauſtral Priors govern the Abbey in abſence of the Abbot, and during the Vacancy of the Abbatial See, as it happens to be ſo long as the *Commendum* laſts. Conventual Priors are the Heads of Houſes dependant on Abbeys, in regard, that, as we have ſaid before, Monks were ſent to take the charge of the Revenues of theſe Houſes; and there was one amongſt them whom all the reſt obeyed, from whence at length, came the name of Prior. And it is from that that the ſimple Priories, as they are called now adays, becauſe they are ſecularized, and Chappels, derive

Of Priors among Monks.

their Original. Now seeing some of these Priories became considerable, they were elective in the same manner as Abbeys were. And therefore they are in the Kings Gift, as well as the Abbeys; and the Pope in providing to them observes this difference only, that he bestows Bishopricks and Abbeys in full Consistory, and Priories in Chamber. I have said that Claustral Priors govern the Abbey during the time that it is in *Commendum*; which is to be understood of the Government in respect of Monastick discipline: For though *Commendatary* Abbots are substituted in the Rights of Regular Abbots, yet it hath not been thought fit to subject the Monks to them, in what concerns the Rule of their Institution. However, they take the power of putting in and turning out the Claustral Priors, according to the terms of their Bulls, which give them full authority over the Monks. But that power hath been qualified especially in respect of the Religious who live in Congregation, such as are in *France* the Benedictin Monks of the Congregation of St. *Maur*, who elect their Claustral Priors. At first, every Abbot

Abbot was Supream in his own Monaſtery, and Independant of any other. The Priors and other Claustral Officers depended ſolely on him: But the Reformations of *Cluni* and *Ciſteaux* introduced ſome alteration into the ancient Government. The Monaſteries that followed that Reformation preſently ſubmitted to the Abbots of *Cluni* and *Ciſteaux*, who were like the Generals of all the other Abbots and Priors, and by that means they became dependant on them.

*Cluni* and *Ciſteaux* have changed the Ancient Government of Monaſteries.

Beſides, the Heads of Monaſteries, that they might be independant of the Biſhops, were exempted from their Juriſdiction, which made a kind of New Hierarchy in the Church: For whereas before the Monks depended on their Abbot, for the Rule, and for all the reſt, on the Biſhops in whoſe Dioceſes they lived, they made now a particular and diſtinct Body in the Church, which acknowledged no Biſhop but the Pope for Superiour; and for Government of that Body they eſtabliſhed a Form of little Councils, which they called General Chapters: The Pope having granted to the Heads of theſe Orders

great Priviledges, which have in many things derogated from the Jurisdiction of Ordinaries. This Reformation hath been found so useful to keep Monks in their Duty, that it hath not only been received amongst other Religious, who pretended an Exemption from holding such Chapters, but is also augmented, especially since the Council of *Trent*, which will have Monks live in Congregation. In this manner the Reformation which is called the Congregation of St. *Maur*, hath been established in *France*, under the Popes *Gregory* XV. and *Urban* VIII. who in their Bulls of Erection gave power to that new Congregation, to aggregate thereunto the Monasteries that would accept the Reformation. And this hath wonderfully redounded to their profit; for they possess at present all the good Abbeys of the Kingdom. They depend not at all on the Bishops, but immediately on the Pope, and they are governed by a General who is chosen every three years according to the Rules of the Canon Law. Besides, they have Provincials, Assistants and Definitors, as the other Modern Religious have.

I mention

I mention this, that we may not meaſure the Rights of Commendatary Abbots according to the practice at preſent obſerved amongſt the Monks, but according to the Cuſtom that prevailed before theſe Reformations. The Popes, who make Commendatary Abbots, have in *France* taken ſome Rights from them, and given them to the Religious of the Congregation of St. *Maur*; for they give them not only liberty to chuſe Clauſtral Priors independently of the Abbot, but have alſo united to the Conventual *Menſæ* the Clauſtral Offices, which the Abbots had Right to diſpoſe of before the Reformation, as well as of all the Benefices of their Abbey. The power then of Commendatary Abbots over the Monks muſt be limited according to the Bulls of Popes that have been received in *France*; and we muſt know wherein they have derogated from the Bull of *Commendum*, which gives Commendataries all power both in Spirituals and Temporals. By Spirituals Commendatary Abbots would have meant the Preſentation or Collation of Benefices, and the Juriſdiction in regard of the Monks. They pretend-

A Derogation from the Rights of Commendatary Abbots.

ed that the appointing of Clauſtral Priors depended on them, that the Right of viſiting and correcting belonged to them; and in a word, that being ſubſtituted into the Rights of Regular Abbots, they ought to have the ſame Authority and Juriſdiction. But *Fagnani* relates a Bull of *Innocent* X. in favours of the Monks of *Ciſteaux* againſt a Commendatary Abbot, who took to himſelf all the Rights that we have juſt now mentioned. By that Bull it is ordained, that Commendatary Abbots ſhall exerciſe no Juriſdiction over the Monks; that the Abbot of *Ciſteaux*, and other Regular Abbots of that Order, ſhall viſit every one his own Diſtrict, or Commiſſionate Viſitors; and that the Spiritual Juriſdiction over Monks ſhall not be adminiſtred by Commendatary Abbots. It meddles not with the Nomination or Collation of Benefices, becauſe without doubt that belongs to the Commendatary Abbot, as it did before to the Regular, who in the beginning had a Soveraign Authority over the Monks; and they, on the contrary, had none over him, as appears by a Letter of Pope *Pelagius* related by *Gratian*,

*Proſper Fagnani.*

*Gratian*, againſt the Monks, who under pretext that they had elected their Abbots, would needs turn them out, and chuſe others in their place who might comply with their manner of living. (1) *Nullam poteſtatem de cætero*, ſays Pope *Pelagius*, *nullam licentiam Monachis relinquimus pro arbitrio ſuo aut Abbates expellere, aut ſibimet alios ordinare, quia nulla autoritas remanebit Abbati, ſi Monachorum poteſtati cœperit ſubjacere, ut de cætero fideliter & ſtudiosè univerſa quæ vel ad divini cultus reverentiam, vel ad utilitatem ejuſdem Monaſterii pertinerent, Abbatis ſollicitudo, ad quem poteſtas tota pertinere convenit, debeat adimplere.* Theſe words are chiefly to be obſerved. *Abbatis ſollicitudo, ad quem poteſtas tota pertinere convenit.* And the Commendatary Abbots, who by Diſpenſations from Popes have ſucceeded to the Rights of Regular Abbots, have by common Law the ſame abſolute power, and ought by conſequent diſpoſe of all the Benefices of the Abbey, without any oppoſition from the Monks, unleſs there be a contrary Cuſtom that derogates from the Canon Law, which gives the whole power

(1) *Gratian.* 18. q. 2. C. *nullam.*

power to the Abbot, and not to the Monks.

Of Regulars. I shall say nothing in this place of the other Religious, who are commonly called Regulars, because much of what we have observed may be easily applied to them. It is true in the Canon Law Monks and Regulars are pretty often distinguished, but they are also many times comprehended under the same Rules; and that which makes them different is not considerable as to the matter we treat of. The Canons themselves who are called Regular, and who take the Title of Regular Clerks, lead at present a life that resembles more that of Monks, than that of Clerks: For they live separately in their Monasteries, and are subject to their Abbots or Priors. They are no more in the Cathedral Churches under the direction of their Bishops, and so far from being employed by them in Ecclesiastical Functions, they depend entirely on their Regular Superiours, who dispose of their Persons and Employments. And therefore it ought not to be thought strange, that we reckon all Regulars in the number of Monks, because they differ not from them,

them, as the learnedeſt Canoniſts have obſerved (1) unleſs in certain Caſes expreſſed in the Law, *exceptis caſibus in Jure expreſſis.* This makes me think, that the Abbots or Priors of Canon Regulars ought by common Right, as well as Abbots amongſt Monks, to have all the government both in Spirituals and Temporals, and that therefore it belongs to them to diſpoſe of all the Benefices and Offices of their Communities: But they have followed the Reformation, that ſubjects them to Conſtitutions, wholly oppoſite to the ancient common Right of Abbots. We ſee that the Abbot of St. *Genevieve* in *Paris* is elective, and that every three years they make a new Election. In a word, they live in Congregation, and have general Chapters, for ordering the more important affairs of their Order: Which differs much from the Ancient Rights of Abbots. Nor is it to be imagined, that if the Abbey of St. *Genevieve* returned into *Commendum*, the Commendatary Abbots ought to be obliged to ſhare their Juriſdiction with the Religious: But they ought to reaſſume the Ancient Right of Abbots, and only

(1) *Hoſtien. Panorm.*

only consider wherein the Popes have derogated from it in favours of the Religious who live in Congregation. But as it hath been already observed, there is nothing taken from Commendatary Abbots, but the Jurisdiction that concerned Monastick Discipline. Though I have often spoken of Commendatary Abbots, and of the Rights that belong to them, yet I thought it not proper to examine particularly, whether their Title be Canonical, because that would have carried me from my subject; it being sufficient that the New Law hath established it.

A comparison betwixt Commendatary Abbots and Regular.

It is true in the beginning, there was great crying out against *Commendums*; And there are still a great many that cannot approve of them: But if a History were made of Regular Abbots as there has been of Commendataries, we would find that there have been greater abuses in the Church under Regular Abbots, than there are at present under Commendatary. Commendatary Abbots have but the third part of the Revenues of their Abbeys in their disposal: The second part is appointed for the maintenance of the Monks, and the third

third for the charges of the Monaſteries. The Regular Abbots, on the contrary, had the diſpoſal of all the Revenues of their Abbeys, they ſtarved their Monks, and ſquandered away the Rents of the Monaſteries, by leading lives altogether inconſiſtent with their profeſſion. The difference then betwixt Abbots Commendatary and Regular is, that the former enjoy but a third of the Abbey, and the whole was for the uſe of the others. It is true Regular Abbots had not Bulls aſſigning them the Revenues of their Abbeys in *utilitatem perſonæ*; but notwithſtanding they diſpoſed of them as if they had been properly their own: Whereas the Bulls of Commendatary Abbots appoint the beſt part of the Revenue of Abbeys for the uſe of the Poor, the Monks and Churches. I am perſwaded that the Monks deſire not that Regular Abbots ſhould be reſtored with the ſame power they had before. If it were ſo, the Thirds which now they enjoy peaceably without any charges, would no longer be at their diſpoſal, but in the power of the Abbot, who would govern them according to his humour. I aſſert nothing but

but what hath been said before me by the most zealous Benedictine Monks, who have often complained of the Rigour wherewith their Abbots treated them, and of the profuse dissipation of the Revenues of their Abbeys. That I may not be tedious, I shall only here report some words of the Abbot *Trithemius* upon that subject, and refer the Reader to the works that he hath made for the Reformation of his Order, and especially of the Regular Abbots of his time.

A Description of the Life of Regular Abbots.

It is well known that *John Trithemius* was a Religious Benedictine, and one of the most famous Regular Abbots of his Order. He was at many General Chapters, and presided in some, in which some Harangues that he made are still extant, wherein he describes at length the disorders of his Brethren, who lived in a more secular way than Abbots Commendatary do at present. (1) He upbraids them with want both of knowledge and piety, that they were wholly addicted to the World, and minded nothing but Riches & Pleasure. He lays before them the holiness and other virtues of their Forefathers, (2) and

(1) *Trith. Orat. 2. Ann.* 1492.

(2) *Orat. 2. Ann.* 1493.

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at the ſame time ſhews how much their Order was corrupted, after this manner beſpeaking them in an aſſembly: *O vos Abbates idiotæ, & ſcientiæ ſalutaris inimici, qui diem obſcœnis amoribus conſumitis, qui vinum in ſaturitate bibitis, qui terrenis lucris intenditis, qui ad tabulam ſtolidi luditis; quid reſpondebitis Deo & legiſlatori veſtro benedicto?* That corruption was ſo univerſal, that he affirms that of Ten Thouſand Monaſteries, there were not a thouſand that any way obſerved the Rule of their Inſtitution; but that the Abbots were wholly plunged in debauchery, *voluptatibus carnis ſubmerſi*, and he applies theſe verſes to them.

*Neglecto Superum cultu, ſpretoq; tonantis*
*Imperio, Baccho, indulgent, Veneriq; miniſtrant,*
*Sacra ferunt Auro, numinis Altaria Vendunt,*
*Auro vina libant, Auro laquearia fulgent.*
*Scorta tegunt gemmis, canibus convivia ponunt,*
*Exuviis inopum culti diteſq; rapinis,*
*Succeſſu elati Superos Acherontaq; rident.*

This is the deſcription that the Abbot *Trithemius* makes of the Regular

gular Abbots of his time in a Harangue that he spoke in their presence; and in the same place he adds (1) that they who called themselves reformed were no better than the rest. The same Abbot in another Harangue describes at length (2) the rigourousness of Abbots towards their Monks, whom they obliged to fast, whil'st they themselves feasted with those whom they invited to their Tables, and exempted themselves from the usual Fasts under pretext of Hospitality. He upbraids them that they were not true Abbots, seeing they were not in place of Fathers to their Monks, to whom they denied what was necessary: *Necessaria fratribus tuis alimenta subtrahis, vilia & insipida largiris; tu optimo vino stomachum tuum satias, fratribus quod deterius est subministras.* This being well considered, I don't think that the Monks who at present live under Commendatary Abbots, desire to be again governed by Regular, who have used them more like Slaves than Children. And it is not to be imagined that that abuse reigned only in the time of Abbot *Trithemius*: But that learned Abbot was moved with the disorders whereof he

(1) *Qui nomine reformati, re autem ipsâ deformati sunt.*

(2) *Orat. 4. Ann. 1496.*

he was a witneſs, and not being able to ſuffer them, he wrote a letter which bears this Title, *Liber penthicus de ruina Monaſtici Ordinis.* Wherein he deplores the lamentable ſtate to which the Order of St. *Benet* was reduced (1) he ſays freely, that the Church had no need of Monks: And ſeeing many Monks forſook their Profeſſion to become Canons, he calls them Apoſtates, notwithſtanding the Diſpenſations they had received from the Pope. Moſt part of theſe evils in Monaſteries proceeded from the Elections, becauſe (2) wicked Monks could not but chuſe a wicked Abbot.

(1) *Trith. de ruina Monaſt. Ord. cap. 2. ut breviter dicam quid ſentio, nec Monachis Eccleſiæ, nec Eccleſiis Monachi digni ſunt.*

(2) *Quales Monachi, tales Abbas, Monachorum.*

In fine ſo exceſſive was the vanity of Monks and Abbots at that time, that as the ſame Author informs us, Monks would not be called Monks. They abhorred ſo Sacred a name: *Sanctum nomen quaſi ſtultitiam abominantur.* Nor would the Abbots be termed Abbots, they thought they were affronted, when that Title was given them. *Abbatis noſtri nomen ſuum tanquam indignum judicantes, gratioſi domini vocantur; & ſi contigerit eos ſimiliter appellari dominos Abbates, indignantur, & vocantem ſe aſpernantur*

*aſpernantur & avertuntur tanquam magnam paſſi injuriam.* Beſides, the Regular Abbots of that time fell into a paſſion when they were called, *My Lord Abbot*; And at preſent Church men of quality look upon that as a very honourable Title. But what is ſtranger, they had more men in their Retinue, than the wealthieſt Biſhops had; and it many times happened that a poor wretch who had been choſen Abbot, had the Train of an Arch Biſhop: *Videres*, continues Abbot *Trithemius*, *famulos eorum flectere genua, deponere capucia ſua & ſe inclinare; non Abbates, ſed Archiepiſcopos putares. O vanitas inſana! Filius pauperis ſutoris Abbas factus, dominus gratioſus nominatur.* And that nothing might be wanting to the diverſion of Regular Abbots, they went to baths with great equipage, and in good company, as the ſame Abbot upbraids them in one of his Harangues; (1) *Ad Thermas ſumptuosè properas, ſocios & ſocias vocas.* This was the condition of Monaſteries and Regular Abbeys, when Commendataries were eſtabliſhed: And I leave it to the Reader to make the compariſon betwixt them. I pre-

(1) *Trith. Orat. 4.*

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tend not, for all that, to Juſtify the *Commendum*, nor the vices of Commendatary Abbots. But it is my deſign only to ſhew that we muſt not always Judge of things, by the abuſe that men make of them; and that if the Hiſtory of the Abbot Regular were made publick, as it hath been intended, all men would be perſwaded that Regular Abbots have been no better men than Commendataries; and that it would be, in fine, a very bad Reformation in the Church, to reduce Abbeys again under Rule, in the manner as they have been formerly. It might be ſaid then *erit noviſſimus error pejor priore.* To make a profitable reformation to the Church, it would be neceſſary to go back to the moſt Ancient Canon Law, which ſubjects Monks to the Juriſdiction of Biſhops, and at the ſame time eſtabliſhes an independance amongſt the Houſes, as it was in the beginning. Every Monaſtery ſhould obey a Superiour or Abbot, and the Superiours or Abbots ſhould obey the Biſhops, who ought to viſit them as well for the Spiritual as Temporal. That would be the means to hinder

diſorder and the diſſipation of Revenues, of which a great part is ſpent in needleſs Journeys, and in holding general Chapters. But it is to no purpoſe to enlarge any more on this matter, which requires a particular treatiſe.

Military Orders.

Beſides the Monks and Regulars we have ſpoken of, there is another ſort of Religious, who according to their Inſtitution, bear the name of St. *John* of *Jeruſalem*, from whom deſcend thoſe that are called Knights of *Malta*. That Order is much different from other Religious, and their Benefices differ alſo from the nature of all other Benefices. They are rather the Adminiſtrations of Hoſpitals, than Benefices, and in effect, that Order began by an Hoſpital that was built at *Jeruſalem*, for the reception of thoſe who went to ſee the holy places. The founding of Hoſpitals for Lodging of Strangers, is Ancient enough and there was either in the Biſhops Houſe or elſewhere, places appointed for that end, that the ſick might be taken care of, and other charitable works performed, for which part of the

the Revenue of every Church was allotted: Afterward in proceſs of time they were diſtinguiſhed from the common Revenue of Churches, and many private perſons gave Lands and Inheritances to be erected into places of piety in imitation of Monaſteries. They cannot be ſaid properly to be Benefices; becauſe the Rents of them are not deſigned for Church men, but for all men who are in miſery and want. And therefore there are as many kinds of Hoſpitals as there are calamities. In the beginning the Biſhop had the care of theſe Monaſteries, becauſe he ought to provide for the neceſſities of the Poor, and of all thoſe who were in miſery, as well as for the ſubſiſtance of Clerks. But the Religious of the Hoſpital of St. *John* of *Jeruſalem* made a particular Body in the Church, which hath to this day its particular Conſtitutions. To ſpeak properly there is but one Hoſpital in all the Order, and that Hoſpital is at preſent reputed to be in *Malta*. All other private Hoſpitals or Commanderies, are but members of that Hoſpital, on which they depend: And therefore their Revenue by Right,

belongs to the common Treasury of the Order.

The Original of Commanderies.

I think Commanderies may be compared to the conventual Prieuries of Monks, which in the beginning were only administrations of the Revenues of certain places distant from the principal Monastery. As Monks were placed in these Houses to take care of the Rents, so also there hath been a necessity of sending Knights into those places where the Order had Lands. The name of *Commander* hath great resemblance with that of *Præpositus*, which was given to Monks who managed the Rents of these remote Houses. Besides, their administration was called *Obedientia*, because they depended wholly on the Abbot, who gave them that Commission. It is Just so with the simple Commanders of *Malta*, who are rather Farmers of the Order than Beneficiaries They have, nevertheless converted their Commissions or Farms into a kind of Benefices, paying a certain acknowledgment to the common Treasury of the Order; and that acknowledgement is called *Responsion*.

We must put a difference then, betwixt

twixt Hoſpitals which are by Foundation Secular, and Regular Hoſpitals that are poſſeſſed by Religious, ſuch as are the Commanderies we ſpeak of, which are appropriated to the Religious of the Order, and cannot be poſſeſſed by others. Nay it is neceſſary alſo, that thoſe of the Order be qualified for peaceable enjoying of them, and their Benefices are not all of the ſame nature. We muſt therefore obſerve, that there are amongſt them Knights, Chaplains, and ſerving Brothers, and that there are Commanderies, or Revenues aſſigned to theſe three different qualities. There are beſides the great Officers, the firſt of whom is he that at preſent is called the great Maſter of the Order, and is the Head; who in the beginning was the Maſter of the Hoſpital: Under him are the great Officers of the Order, who are for moſt part Military Officers becauſe of the employments to which they are appointed, ſuch as the Admiral, *Mareſchal* and others. I ſhall not ſpeak here of the Bayliffs or Conventual Priors who are of the great Croſs, nor of their other Officers, becauſe the Inſtitution of their Order and

their Laws are Printed. I shall only add that it is to be observed, that though that Order be composed of so many Nations, yet it is but one only Convent divided into several Tongues. Every Tongue contains several Provinces, and in every province there is a great Prior who from time to time holds Provincial Chapters. For obtaining a Commandery one must be of the Nation where the Commandery lies, have performed his Caravans, which consist in some years Services at *Malta*, and be of the quality requisite for the Commandery, being besides bound up by certain Statutes; But they are often dispensed with at the Recommendation of Princes, who have also made Concordats with the Knights of *Malta*, as well as with the Popes.

A Military Order wherein one may marry.

There is another kind of Knights who also enjoy Church Lands, and nevertheless seem neither to be Religious nor Ecclesiasticks, because they are Married. They call themselves, however, Religious, and have their Laws as other Religious have. In *Spain* the Commanders of the Orders of St. *James*, of *Calatrava* and *Alcantara* are of that nature.

There

There are in *France* alſo the Knights of St. *Lazarus* who may Marry. It is pretty difficult though, to tell upon what Title theſe Married Religious poſſeſs Eccleſiaſtical Revenues; unleſs it be ſaid, that being by Profeſſion Religious, they ought to be obliged to Chaſtity: But that the Pope who according to the Maxims of the New Law, is Maſter of the Canons, has diſpenſed with that Obligation, and that by an Apoſtolical Priviledge they may have Wives: Which is conform to the opinion of the ableſt Divines, who think that the Pope may for lawful cauſes diſpenſe with Monks as to their Vow of Chaſtity. The married Commanders of theſe Orders muſt then be reckoned amongſt Regulars, and they may in conſcience enjoy, under the Title of Regulars, Church Lands that are appropriated to their Order. This, at leaſt, is the opinion (1) of one the moſt learned and ſtrict Canoniſts of our age, who calls *Philip* II. King of *Spain*, the greateſt Prelate in the Church next to the Pope, becauſe he was the chief or great Maſter of the three Military Orders of *Spain*, and enjoyed a good part of the Tithes of

(1) *Mart. Navar.*

*Phil.* II. the richeſt Prelate of the Church.

of Churches within his Territories. In this quality of Prelate Regular, the King of *Spain* is the richeſt *Beneficiary* in his Kingdom : And ſeeing he is not only great Maſter of the Orders of St. *James*, *Calatrava* and *Alcantara*, but is alſo King of *Spain*, he can, as King, appropriate to his own uſe the Revenues of his Commanderies, at leaſt as much as is neceſſary to make him live like a King. In the ſame manner as it is lawful, according to the Maxims of the New Law, for Cardinals, Sons of Kings, Nobles and men of Letters to poſſeſs ſeveral Benefices, that they may be able to live according to their quality.

From all that hitherto hath been ſaid, it is eaſy to Judge how much the Eccleſiaſtical Diſcipline hath changed in Beneficial matters, and how much the preſent practice differs from Ancient Cuſtoms. The Canon Law does, indeed give the entire diſpoſal of Church Revenues to the Biſhops within their ſeveral Dioceſes ; but the new and particular Law takes from them the greateſt part of their power. Hoſpitals in the beginning depended on the Biſhops, as all other goods and Lands

that

that were dedicated to works of Charity; they appointed men to take the care of them, and the adminiſtrators gave account of them. But by degrees they have loſt that Right, and even private perſons have poſſeſſed Hoſpitals in Title of Benefice. That Abuſe hath been corrected by the Councils of *Vienne* and *Trent*, which revived the Ancient Canon Law: But they are not received in *France*, as to that point that the Adminiſtrators ſhould give in their accounts before the Ordinaries. In effect, ſince the management of theſe Rents ſeems not to have any Spiritual relation, it has been thought more convenient to give the Adminiſtration of them to Laicks, who in ſome manner are in place of *Guardians*. Church-men are excluded from it, becauſe they might abuſe them, and apply them to their own uſe as Benefices belonging to themſelves. Nor have the Nobility and publick Officers any ſhare in that affair, becauſe it might be feared that they would render themſelves Maſters of the Revenues aſſigned to Hoſpitals. And therefore they chooſe moſt commonly good and ſufficient Citizens, and the

the right of nominating them belongs to the Founders. The Edict of *Henry* II. gave the Overſight and Viſitation of all the Hoſpitals of the Kingdom to the great Almoner of *France*: But *Francis* I. gave the ſame power to the Kings Judges of the places where the Hoſpitals lay. It is true the Ordinaries proteſt againſt that Edict, pretending that it is prejudicial to their Rights: But the Parliament of *Paris* took no notice of their oppoſition, farther then that it was decreed, that they might depute one or two on their part, to be preſent with the Kings Judges at the Viſitation, but with this condition, that they could not in any thing contradict them. *Henry* II. made a Second Edict, which is wholly conform to that of *Francis* I. Since that time the Ordinaries have no power over the Revenues of Hoſpitals, only they and other Church men are invited to be preſent at the making of the accounts. It is, nevertheleſs, to be obſerved that there are ſeveral Benefices which are real Titles, and yet called Hoſpitals, Gods Houſes, and Alms Houſes, and which in effect are not Hoſpitals, but

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ſo called for ſome particular reaſons which would be too long to relate. Beſides, Hoſpitals are ſometimes given in Title of Benefices, when they are no more but Acceſſories to a more conſiderable Benefice.

Having ſpoken of the perſons in whoſe favour the Maxims of the New Law have derogated from the Canons and Ancient right of Biſhops, it remains now to ſpeak of the things that derogate from the ſame Right, and we ſhall begin with the Reſignations that are called in *favorem*. There are two ſorts of Reſignations. The firſt which is called a pure and ſimple Reſignation is made in this manner: The Beneficiary does purely and ſimply reſign his Benefice into the hands of the Ordinary; and then the Benefice is void. That Reſignation, which may alſo be called Renunciation or Demiſſion, is Canonical, and we have ſome inſtances of it in Antiquity; But Biſhops did not eaſily admit of it: They made examination whether they who would lay aſide Eccleſiaſtical Employments, had reaſons that obliged them to that Demiſſion; and if no lawful reaſon appeared, their Re-

Derogations from the Rights of Biſhops.

Resignations or Demissions were not received. The other Resignation which now-a-days is far better known than the former, is called Resignation *in favorem*; because he that resigns his Benefice, does it only on this condition, that it shall be given to him in whose favours he hath made the Demission: and that if it be given to another the Collation should be null. This kind of Resignation is so New, that there is no mention made of it in the Body of the Canon Law, in the Decretals, nor in the Sext. The New Canonists themselves do all agree that it is Simoniacal, because it includes a Paction or Condition, to wit, that the Resignation of the Benefice is not made but that the other may be invested who is named by the Resigner. And therefore there was a necessity of having recourse to the Pope to get a Dispensation for the Simony: And that is the reason why none but the Pope can receive those Resignations *in favorem*, because he is above the Canons and Positive Law. Bishops cannot admit of them, in regard their power is limited, and that they cannot purge the Simony which is incur-

The Novelty of Resignations *in favorem*.

incurred by a compact. After all, there is nothing that derogates more from the Right of Ordinaries and Patrons, than that Reſignation *in favorem*, becauſe they who poſſeſs Benefices, diſpoſe of them in the ſame manner as of their Inheritances: And it ſurpriſes me to ſee it ſo common, that men of greateſt integrity make no Scruple by that means to render their Benefices hereditary in their families, as if the Popes diſpenſation acquitted them always of Simony. Abbot *Trithemius* could not endure that the Monks of his time obtained ſuch Diſpenſations from the Pope (1) *Nec mihi*, ſaid he, *diſpenſationem Romani Pontificis objicias, quam niſi Deus approbet, te minimè excuſabit, Non omnia Deo placent, quæ per ſummum Pontificem in terra geruntur.* Many now a days, cry out againſt the *Commendum*, who nevertheleſs countenance by their example, the Simony of Reſignations *in favorem*. We do not find that they reſign their Benefices into the hands of Ordinaries, to be by them diſpoſed of after a lawful and Canonical way. Men are ſo accuſtomed to this evil, that they don't think it is an evil, it is grown ſo common

(1) *Trith. de ruina Monaſt. Ord.*

mon. In the mean time, since these Resignations *in favorem* are Odious, and that they are prejudicial to the Rights of Ordinaries and Ecclesiastical Patrons, many Regulations have been made to limit them.

**Regulations that derogate from Resignations.**

In the first place, the Regulation which is called *de viginti diebus* has been renewed in respect of them; and this was made to hinder Benefices from becoming Hereditary. That Regulation is at present called, *de infirmis Resignantibus*. And it bears, that if a sick person who resigns his Benefice, die within twenty days, the Benefice is vacant by death, and therefore the Collation made upon such a Resignation is null, but that Regulation is at present useless, because the Popes daily derogate from it in prejudice of Ordinaries. None but Cardinals by virtue of their Priviledges, and some persons of quality, to whom the Pope grants the like indulgences, enjoy the benefit of the Regulation *de 20. diebus*, as well in respect of those that are in health, as of the sick. In the Second place, there is another Regulation which is called *de publicandis Resignationibus* which is in

in force in *France*, and hath been made to prevent Benefices from becoming Hereditary. By that Regulation the Reſignee is obliged to publiſh his Reſignation within the ſpace of ſix Months; & if within that time he take not Poſſeſſion of the Benefice, and the Reſigner die, the Benefice is vacant *per obitum*. However the Right of the Reſignee does not preſcribe till after three years, whil'ſt the Reſigner is alive, and he hath all that time for taking poſſeſſion of the Benefice that hath been reſigned to him. In the third place, there are many conditions required to make a Reſignation *in favorem* valid. Seeing they cannot be admitted but by the Pope, they cannot be made but by Proxy. And that the Procuration may be good, it ought to be made before an approved Notary, whether Apoſtolical or Royal, and ſigned by two Witneſſes. It ought beſides to be ſpecial, and for ſuch a Benefice: And if it take not effect within a year, it is preſumed to be revoked. The Reſigner may alſo revoke his Reſignation before it hath taken Effect, and that Revocation ought to be legally intimated to the Reſignee, or to the Proxy.

Of Regreſs. There are alſo ſome certain Caſes, wherein the Reſigner may re-enter into his Benefice, by a way which is called *Regreſs*. It is not eaſy to determine when the Regreſs ought to take place: and therefore the Courts of Juſtice differ much amongſt themſelves in the Judgments they pronounce about that matter; and many times one and the ſame Parliament varies as to the matter of Regreſs. In that caſe Equity is more obſerved than the Rigour of Juſtice: For it is commonly thought the ſick perſon hath made a tacit Compact with him to whom he hath reſigned his Benefice, that his Reſignation ſhall be null, in caſe he recover his health. Seeing that Compact looks very much like confidence, it is thought to produce a kind of natural obligation, and that the Reſignee ought to be condemned as a perfidious perſon. Upon that principle the Parliament of *Normandy* inſiſted not long ſince, in deciding a difference that happened betwixt two Church-men concerning the Cure of holy Croſs in *Rouen*. The Reſigner Recovering his health would have entred again into his Benefice at the deſire of his Pariſhioners

ners who ſollicited him. On the other hand the Reſignee had taken Poſſeſſion of the Cure, by virtue of his Legal Collation from *Rome* upon the Reſignation. Nevertheleſs the Reſignee was maintained in his Poſſeſſion, and it was Judged that Regreſs ought to take place in that caſe. Perhaps it would be more convenient to aſſign an Alimentary Annuity to him that hath reſigned his Benefice, than ſo eaſily to admit Regreſs. At leaſt they ought not to take place, when the Reſigners reſerve to themſelves an Annuity. Beſides, by countenancing Regreſs, Reſignations *in favorem* are alſo countenanced, which are odious,& Simoniacal,becauſe many would not reſign their Benefices, if they did not hope to enter again by way of Regreſs. And therefore Regreſs ought not to be granted but very rarely, and for weighty reaſons, for inſtance, becauſe of Nonage ; It being to be preſumed that when a Beneficiary who is under age, reſigns his Benefice without the conſent of his Father or *Guardian*, he hath been perſwaded to do it by ſome trick. So that Regreſs then takes place,and the Minor

is restored to his Benefice without any New Collation.

Of Exchange. There is another kind of Resignation *in favorem*, which is called Permutation or Exchange, and is likewise prejudicial to the Right of Ordinaries, and more to that of Patrons: It is in the Ordinaries power, nevertheless to admit or reject them, that depending on him. He ought never to allow Exchanges unless for lawful and Canonical reasons: But so great is the corruption now a days in Beneficial matters, that nothing occurs oftener than instances of Exchanges without any cause; and Bishops grant them easily, when Benefices are in Patronage, and they confer them not in full Right. Permutation, then, is nothing else but the Exchange of one Benefice for another, made in the hands of the Superiour: And seeing it is supposed to be made for true reasons, and that by consequent there is no Simony in the case, it may be admitted by the Ordinary's, in as much as there is no need of a Dispensation. To the end an Exchange may be valid, the Exchangers must resign their Benefices in the hands of the Ordinary or

or Ordinaries, if they be of different Dioceſes, and the Ordinary gives them New Collations, according to their demands, for he is bound, and cannot diſpoſe of the Benefices, but in favours of the Exchangers. If he doth it the Collations are null, and each continues in his Benefice. Beſides, they muſt mutually take Poſſeſſion of the Benefices, otherwiſe nothing is done, and things remain as they were before. If one onely of the Exchangers had taken Poſſeſſion, and the other die, the Benefice of him that dies is vacant *per obitum*, and the other keeps his Benefice, becauſe the Exchange was not compleated. This hath been appointed by the New Ordinances and the Declaration of inſinuations, to prevent a diſorder that was much in uſe. For it happened very often, that a Beneficiary being ready to die, exchanged his Benefice with another Beneficiary, and the latter took Poſſeſſion of his Benefice with whom he had exchanged; whereby the Permutation was accompliſhed on his part, ſo that the Benefice belonged to him: Afterward the ſick perſon dying without having taken Poſſeſſion of the Benefice that was given him in

Exchange, the surviver kept his former Benefice; and so he enjoyed two at the same time, by that fetch which Mr. *Charles du Moulin*, in his Commentary upon the Regulation *de publicandis*, calls *speciem furti*. Nevertheless the practice continued long after him in the Parliaments, and that was called *gaudere de bona fortuna*. But the New Ordinances have reformed that abuse, and there is no more now of *gaudeat de bona fortuna*.

Of Unions.

The frequent Unions of Benefices, which were made in the times of Schism and disorder, have also done great prejudice to Ordinary Collators, and to the Pope himself, because by that means many Titles have been suppressed. They have nevertheless been profitable to Bishops and Chapters, who have made use of these occasions for uniting to their Benefices, inferiour Livings & Cures: But these kinds of Unions are not now in use, unless it be sometimes in favour of Communities who enjoy by that means several Benefices: yet there is greater care taken of that at present, than there was in times past; and if it were not well lookt after, a great part of Benefices would fall into the hands of Regular

Regular and Secular Communities: Which would be very prejudicial to Collators and Patrons, and even to private Church-men, who can no longer pretend to Benefices which are united in that manner. I ſpeak not here of neceſſary Unions, or at leaſt, of ſuch as are uſeful to the Church; for theſe Unions ſtill ſubſiſt. If, for inſtance, a Priory or Chappel is ſo ruined, that it is impoſſible to reſtore it; what remains of the Revenue ought to be united to another Church: If the Prebends of a Chapter or Collegiat Church are too ſmall, ſeveral of them muſt be joined together: If in a Town or Burrough there be too many Cures, and they but poor, it is convenient to ſuppreſs ſome of them, and give the Revenue to others. In the ſame manner a ſimple Benefice may be joined to a poor cure; &, in a word, Monaſteries where the Rule hath ceaſed, may be joyned to a Biſhoprick that hath not a competent Revenue: But in all theſe Unions the advantage of the Church is always to be regarded, and the Rights of Superiours maintained; otherwiſe they are abuſive. And therefore Unions are not to be made but upon good and neceſſary information. The Biſhop hath

Right to make these Unions, unless it be when the Union is to be made to his own Church, because then he cannot be Judge in his own case. Moreover the Union of Bishopricks is reserved to the Pope.

Of the Indults or Priviledges of Members of Parliament.

Though Reversions have been abolished, yet there are in *France* Priviledges of the Members of Parliament, and the degrees of those who have studied a certain time in the Famous Universities of the Kingdom, which are a kind of Reversions, and by consequent are prejudicial to the Rights of Ordinary Collators, & of Ecclesiastical Patrons. I shall not speak here of the Original of these Priviledges. Only we may observe, that during the time of Schism, Popes granted those favours to Princes, to great men that were powerful in the Courts of Princes, and to such as might be a hinderance to them in their settlement in the Papacy. The Council of *Trent* hath abolished *Indults* as well as Apostolical *Mandats*. But since its decisions are not received in *France*, the Priviledges of the Members of Parliament have been still retained. To the end a Priviledge whereof we are speaking may have its effect, Letters must be procured from the King, commanding the Ordi-

Ordinary Collator, to confer on him who hath the Priviledge the firſt vacant Benefice of his Collation. Beſides, theſe Letters muſt be intimated before the vacancy of the Benefice: and then the hands of the Collator are tied. The *Indultee* or Priviledged perſon hath ſix Months to require the Benefice in, and the Collator can be charged but with one Priviledge during his life: or if it be a Community which dieth not, then it is regulated by the life of the King. The Collator, in the mean time, could formerly oblige the *Indultee* to accept the firſt vacant Benefice, provided it were worth 200 Francs, becauſe the Priviledge is *de beneficio proximè vacaturo.* But he cannot at preſent be obliged to it, unleſs it be worth 600 Francs of yearly Rent. In the number of *Expectative Graces*, or Reverſions, may alſo be reckoned the Kings nomination for his happy coming to the Crown, and his nomination for the Oath of Allegiance, which gives him Right to nominate to the New Biſhop after the Concluſion of the *Regale*, one for the firſt vacant Prebend.

Of Degrees.

The complaints of the Univerſity of *Paris*

*Paris* againſt the Biſhops, who commonly beſtowed Benefices on their Domeſticks and undeſerving perſons, were the cauſe that in the Council of *Baſil*, it was decreed, That the third part of Benefices ſhould be ſet apart for the Graduats of Famous Univerſities, and that if the Ordinaries gave them to others, their Collations ſhould be null. The Pragmatick made in the aſſembly of *Bourges*, ratified that decree of the Council of *Baſil*, but with this qualification, that the third deſtin'd for Graduats ſhould be divided into three parts, and that two thirds of that third ſhould be appropriated to thoſe who had ſome notable employment in the Univerſity. And therefore it was ordered by the ſame Aſſembly, that the Univerſity ſhould name thoſe whom they would have preferred. And thence ariſes the diſtinction of ſimple Graduats, and Graduats named. The Concordat hath preſerved that Right of Graduats: But becauſe fraud might be committed in the third of Benefices which were given in courſe one after another, they had four Months of the year allotted to them, to wit, *January*, *April*, *July*, and *October*,

and

and the Benefices that fall during theſe four Months are appropriated to them. *January* and *July* are called Months of Rigour, becauſe the Collator or Patron is obliged to give the vacant Benefice to the Graduat named, who is the Ancienteſt, and hath moſt Right; whereas in the other two Months which are called Months of favour, he is free to give the vacant Benefices, to ſuch enrolled Graduats as he pleaſes. To be a Graduate, it is enough that one hath ſtudied two years Philoſophy, three years Divinity, and taken the degree of Maſter of Arts. Yet this hinders not but that their Batchelour Graduats, Doctor Graduats, Graduats, in Divinity, the Canon Law and Medicine, to whom alſo there is a certain time aſſigned; and in caſe of competition the moſt qualified Graduate is preferred before the other, though it be ſometimes pretty hard to know who ought to be preferred. That this Right may take effect, the Letters of Degree, Atteſtations of the time of Study and the Univerſities Letters of Nomination, muſt be ſignified to the Eccleſiaſtical Patron or Collator. And becauſe Gentle-

Gentlemen have some Priviledge as to the time of Study, they ought likewise to produce the proofs of their quality. Of all these Instruments and Acts the Patron or Collator ought to keep a Copy. They are besides obliged every year in *Lent* to renew the Register of their names, which they may do in the Office of the Ecclesiastical Register. When a Benefice falls in the Months that are appropriated to them, they ought to demand it within six Months; and that being expired they are no longer admitted to make their Requisition. If the Pope prevent them before they have made their demand, he that hath been provided by the Pope obtains the Benefice; And there is no need that the Pope should even mention that the Benefice is destined to Graduats, because he is not tied to the Law that is in *France* in favours of Graduats. But the Ordinary ought to specify in his Collations the quality of the Graduat, which is the cause for which he gives the Benefice. Nevertheless he may still put questions to the Graduats, though heretofore they pretended to be exempted from examination. But the easiness of obtaining Degrees

grees makes, that there are to be found many ignorant & vicious Graduats. And therefore the Collator, and even the Patron, have always right to refuſe them, if they judge them uncapable of the Benefices which they have demanded.

It is to be obſerved that all ſorts of Benefices are not Subject to Graduats I. Conſiſtorial Benefices and ſuch as are in Lay-Patronage are exempted. II. The dignities of Cathedral Churches; but amongſt theſe dignities the Penitentiary is not reckoned; and there is ſome difficulty alſo as to the Divinity Lecture, though there be Judgments as to that in favours of Graduats. III. The right of Graduats has no place but when the Benefices are vacant by death. IV. When the Graduate hath a Benefice of 400 Francs a year, or an Annuity of the ſame value, which ſtands him inſtead of a Benefice, he is thought provided, and cannot pretend to any Benefice in quality of a Graduate, unleſs he had not that Proviſion by virtue of his degrees; for in that caſe he may renounce his Benefice or Annuity, and have right as before, to demand the Benefices appropriated to Graduats. The reaſon

reason why a Graduat having a Benefice of 400 Francs is reckoned provided is, that in the Concordat 200 Florins are mentioned, which have been valued at, 400 Francs: But I think, at present they ought to be valued at 600. V. When the Benefice that falls in the the month of Graduats is under Rule, it cannot be demanded but by a Regular Graduat. Just so, the Regular cannot demand Secular Benefices. VI. In fine, if an *Indultee* or Priviledged person, and a Graduat, demand one and the same Benefice, the *Indultee* is preferred before the Graduat.

Of Exemptions.

The Exemptions which Popes have granted to several Churches, as well Regular as Secular, have also much derogated from the Canonical Right of Bishops, because Abbots and other Patrons confer in full Right the Benefices which are contained in their Exemptions; and they failing, the Right is devolved on the Pope, who is become their immediat Superiour. This is not a proper place to handle these exemptions to the full, nor to speak of their Original; besides, we have elsewhere said somewhat as to that Subject. I shall only mention

tion what relates to the Cuſtom of *France*.

I. The Decree of the Council of *Trent* that derogats from Exemptions is not received there; But the Titles, on which the Exemptions are founded, are examined; and if the Titles be lawful, the Priviledges that are expreſſed are allowed.

II. Poſſeſſion alone is not enough to authoriſe theſe Priviledges: Legal Titles muſt alſo be produced, in as much as many are in Poſſeſſion of their Priviledges, becauſe their Titles have not been ſufficiently examined, which moſt commonly are falſe and it is not Juſt that Exemption, which is but a Priviledged Right, ſhould prejudice the common Right of Biſhops, unleſs it be well grounded, and granted for lawful cauſes: To this may be added, that (1 [ falſhood can never make a Preſcription, and that a Poſſeſſion grounded on a bad Title, is no true Poſſeſſion. All poſſible rigour ought to be uſed then againſt the Right of Exemption or Priviledge, becauſe it derogates from the Common Law; and nothing ſhould be granted to the exempted, but what is expreſly ſet down

(1) *Fraus nemini debet Patrocinari.*

down in their Title of Exemption: And it is absolutely necessary that the Priviledges be mentioned in plain Terms, without any ambiguity.

III. The more ancient the Titles of Exemption are, of the less extent are the Priviledges of the Exemptions, as appears by Ancient Formularies, which hardly contain any thing else in respect of Monasteries, but the liberty of chusing the Abbot, and the free Disposition of all their Revenues; as to the rest they were entirely Subject to the Bishops.

Exemptions, as we find them now a days, began only with the Reformations of *Cluni* and *Cisteaux*, who were exempted from the Jurisdiction of Bishops by the Title of their Foundation. Though that happened in a disorderly time, yet these Exemptions are not medled with in *France*, seeing they are owned by all men. But there is great cause to doubt of the most part of others, which are supposed to have been granted by Popes after the Foundation of Monasteries. There are but few of them that are true in their full extent, which is easily discovered when one sets seriously

ſeriouſly to work to examin the Titles: And in that manner *Peter de Blois* Arch Deacon of the Church of *Bath* in *England* affirms, that the Exemptions of Monaſteries in his time were examined, of which the greateſt part were forged by the Monks. The Biſhop of *Salisbury* thought the Letters of Exemption of the Abbey of *Malmesbury* to be falſe, *quia in filo & Bulla videbantur vitioſæ, ſtilumque Romanæ curiæ minime redolebant.* Nevertheleſs the Abbot refuſing to ſubmit to his Biſhop, fell into ſuch a rage againſt him, that the ſame *Peter de Blois* complained of it in his letter (1) to Pope *Alexander.*

(1) *Petr. Bleſ. Epiſt.* 68.

III. To whom, upon occaſion of the Abbot of *Malmesbury*, he repreſents the abuſes of Exemptions; take it in his own words: *Viles ſunt Abbates & miſeri qui poteſtatem Epiſcoporum non exterminant, cum pro annua Auri uncia plenam à ſede Romanâ poſſint aſſequi libertatem.* By this it is apparent enough, that Monaſteries obtained for Money from the Court of *Rome*, as many Exemptions as they pleaſed, and that Simony was much practiſed by the

Monks, especially the Regular Abbots, who by that means shook off Obedience to their Bishops, that they might more freely squander away the Revenues of their Monasteries, and have no Body to check them for their vices. (1) *Detestantur Abbates, habere suorum excessuum correctorem, vagam impunitatis licentiam amplectuntur, claustralisque militiæ jugum relaxant in omnem desiderii libertatem. Hinc est quod monasteriorum fere omnium facultates datæ sunt in direptionem & prædam.* These and many other reasons which I omit, are the cause that no great favour is shewn to the Exemptions of Monasteries in *France*, though they be not wholly rejected there: To which may be added, that many of these Exemptions, especially those of Chapters, have been obtained in the times of Schism; and it often happened, that the Chapter which opposed its Bishop, acknowledged one Pope, and the Bishop another. And that is to be taken notice of in the Titles of Exemptions, that what was done upon occasion of Schism may not be authorised.

(1) *Petr. Blæs. ibid.*

Rules how to distinguish true Exemptions from false.

That true Titles may be the more easily

eaſily diſtinguiſhed from ſuch as have been foiſted and counterfeited, we ſhall here ſet down ſeveral Rules, which are neceſſary to be known, if one would with any exactneſs make that diſtinction: And that will not only ſerve to diſcover the falſity of Priviledges and Exemptions, but alſo to Judge of other Titles.

I. One muſt have ſeen true Titles that are paſt all exception, according to which are to be examined thoſe that are produced. The Characters are to be minded if it be an Original Piece; for it ſeldom happens, that they who counterfeit Titles, do exactly imitate theſe Characters, whether it be that they write too haſtily, or that they are ſatisfied to do ſomewhat that comes near them, but which is not altogether like.

II. The difference of ſtile that occurs betwixt true pieces and counterfeit, is very uſeful for diſtinguiſhing the one from the other: for inſtance, one muſt know in what manner Princes in different times began their Letters, and how they finiſhed them; for it is certain, the ſtile hath not been always the ſame.

Beſides, they have alſo expreſſed themſelves in different manners in ſeveral times, as to the Body and Contents of their Letters.

III. The way of dating Letters hath much varied; and that is a thing that hath not been always minded by thoſe who have counterfeited falſe Priviledges: They have for moſt part, followed the Cuſtom of their times.

IV. Chronology and the Subſcriptions of the Writing or Deed are to be minded, examining if they who have ſubſcribed it lived all in that time, and if they could probably be all together in the place ſpoken of; or if the matters of fact reported ſuit with the Cuſtoms and Practice of thoſe times.

V. One muſt not be ignorant of the time when certain ways of ſpeaking began to be in uſe. For it is eaſily perceived that a Piece is New, when it contains New terms and expreſſions.

VI. It is neceſſary to be acquainted with Hiſtory and eſpecially what concerns the Rights of Popes, to know whether the Writing do not attribute

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to the Pope who grants the Priviledged ſome Rights which he did not as yet enjoy: And that happens commonly in Ancient Priviledges, becauſe they who have counterfeited them, have ſquared themſelves according to their own times, and not the times of the Popes whoſe names they have borrowed

VII. One ought to know Chronology, Hiſtory, the manner of beginning and dating of Writings, the diverſity of Stile and of Subſcriptions, not only in reſpect of different Times, but alſo of different Places and Perſons: For it is certain, that theſe things have varied according to the diverſity of Places and Perſons. Princes do not always agree in that with Popes and Biſhops; and Princes differ alſo among themſelves. For inſtance, the manner of beginning the year hath not been uniform in all places, nor in all times, Dates and Subſcriptions are very different according to the diverſity of Places and Perſons. And that has made thoſe who have been ignorant of thoſe different Cuſtoms, fall into ſuch groſs faults, that

the falſity of the Deeds which they have counterfeited ſtares in ones face.

VIII. There is nothing more common than to ſee counterfeit Marks or Monograms. And therefore it is convenient to have true ones, to make a diſtinction of the real from the falſe; which is alſo to be obſerved in Seals, that have been often counterfeited. It muſt not, for all that, be concluded that a Deed is good, becauſe nothing ſeems wanting to the Subſcription, nor to the Seal: For there was nothing more eaſy heretofore than to remove the Seal from one Deed to another. Seeing the Seal was faſtened to the Parchment, and that there was no Counter-Seal, the Seal was eaſily taken off without hurting the Impreſſion, by heating the Parchment a little. It is true in after times that falſification was remedied by means of a Counter-Seal, and a little ſtring that tied the Seal to the Parchment: But for all the care that could be taken it is impoſſible altogether to prevent falſification. There is nothing more eaſy than to keep the Subſcription and Seal entire, and

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with ſome Waters or Eſſences to waſh out all the writing, and to ſuppoſe another Title in what manner one pleaſes. The reality then of the Subſcription and Seal is not a ſufficient proof; but it will be convenient alſo to conſider, whether the Parchment has not received ſome alteration, or whether the Ink be not too new; or different from that wherewith the Subſcription has been made.

IX. The counterfeiting of a Deed hath ſometimes been found out by the newneſs of the Parchment, that had ſome Mark to make it known by. On the contrary, they who have affected to have Titles too Ancient, and have for that end written their Priviledges on the Barks of Trees, have rendered themſelves ridiculous, becauſe it is eaſy to be made out, that at that time when they are ſuppoſed to have been written, there was no uſe made of the rind of Trees, at leaſt in *Europe*.

X. They alſo who have joined many dates together, thinking thereby to render their Titles more Authentick, marking the years of Princes and

Emperours with the Indictions and such other things as were contrary to the Custom of the places and times wherein they lived, thought to have imposed on others by an odd and unseasonable exactness.

Did I not fear to be too tedious, I would give instances for confirmation of all these Rules: But that deserves a separate work. I shall only add some Remarks concerning Cartularies, because I perceive men too credulously believe them, and mind not, that part of the Titles which are contained in Cartularies, are either false or corrupted.

Of what Authority are *Cartularits.*

*Cartularies* are the Rolls or Registers of Churches or Monasteries, wherein are recorded the Contracts of Buying, Selling, Exchange, Priviledges, Immunities, Exemptions and other Deeds and Charters. These *Cartularies*, are long posteriour to most part of the Acts contained in them, and they are only made for preservation of the Acts, and that Posterity may have recourse to them. But there are strong reasons to doubt of the fidelity of those who have compiled the *Cartularies*, because

cause a vast Number of false or corrupted Titles are to be found in them.

In the first place, seeing in the beginning the Custom of writing Titles, or Acts of Foundations, and Immunities or Priviledges, was not as yet introduced, the Compilers of *Cartularies* who saw that they enjoyed several Lands, and that they were in Possession of some Priviledges, without having any Titles for them, have not failed to make, and to insert them in their *Cartularies*. I believe it is for that reason, that the Titles which are in the *Cartularies*, attributed to the Kings of *France* of the first Race, are almost all false; and for the same reason also, we ought to mistrust the Primitive Exemptions, which are the more to be suspected, that they appear the more Ancient. The Law-suits that Bishops have had with the Abbots of Monasteries, have also much contributed to the Augmentation of false Titles: For to back their several causes, they spared no pains in falsifying of Deeds.

In the Second place, the Compilers

pilers of *Cartularies* have not always inſerted the acts as they were in the Original Writing: Which is eaſily proved by comparing the Originals with the Copies that are Regiſtred in the *Cartularies*, or even by comparing Ancient *Cartularies*, with others more Modern; for the later they are, of the greater extent they are. We find, for inſtance, the Foundation of the Monaſtery of *Caſaure*, otherwiſe called of St. *Clement*, in the (1) ſixth Volume of the Hiſtory of the Biſhops of *Italy*, and in the Title of that Foundation, ſome Charters of Immunities, Priviledges, and Exemptions are mentioned. But theſe acts agree not for moſt part with other Copies that are inſerted in a more Ancient *Cartulary* of the ſame Monaſtery. And, which is obſervable, in the Printed Copy, which without doubt hath been taken out of a later Manuſcript, there is an enumeration of many Lands belonging to the Monaſtery of *Caſaure*, as may be ſeen in the Priviledge which bears this Title (2) *Ludovici* II. *Imperatoris Auguſti privilegium fundationis & dotationis Monaſterii*

(1) *Ital. Sacr. Tom. 6.*

(2) *Ibid.* page 1308.

*ſterii Sancti Clementis in Piſcaria, Anno Domini.* 875. But in the Manuſcript *Cartulary* which I have read, there is nothing to be found of that long liſt of Lands and Poſſeſſions: They are only named in it in general, and not in particular. Beſides, theſe words of the date which are in the Printed are not in the Manuſcript *Cartulary*, *Anno Dominicæ Incarnationis.* 875. Becauſe the Emperours at that time made no mention in their Letters of the year of our Lord. The ſame Catalogue of Lands and Poſſeſſions that is to be found in the Printed Priviledge of the Emperour *Louis*, is to be found alſo in another Priviledge granted by *Roger King* of *Sicily* to the ſame Monaſtery. But the Ancient Manuſcript *Cartulary* contains nothing of that liſt: Whence it is to be inferred, that the Monks have made no ſcruple to Regiſter in their *Cartularies*, Titles in a quite different way from what they were in their Originals. The ſame hath alſo happened to the Priviledges of Popes which are in the ſame *Cartulary*: For there are ſome things in the Printed

Printed Copies, that are not to be found in the Manuscript Acts, and amongst others the Priviledge attributed to *Leo* IX. is shorter in the Manuscript, than in Print, for the Printed Copy only ends with this clause; (1) *Quoniam scriptum est, terminos patrum nostrorum nulla authoritate illicitæ temeritatis transgredi præsumi, & quia opportunitatis exigit ratio propter vos & transgressores Canonicæ correctionis debere fræno constringi, illius insuper spirituali baculo perdat animum, cujus temporali gladio Malchus amisit auriculam: Qui autem observator extiterit, ditetur dono Apostolicæ benedictionis, &c.* There is not a word of all this in the same Priviledge, as it is inserted in the Manuscript *Cartulary*. Many other instances might be brought of the great liberty that the Compilers of Cartularies have taken in transcribing Originals, and even the Copies of their Titles; and by consequent they are not much to be credited.

(1) *Ibid.* page 1311.

A distinction betwixt false Titles, and falsified Titles.

It is easy to be Collected from what hath been said, that a Title is not altogether false, though there be falsities in it. Yet I think these kinds of Deeds ought

ought entirely to be rejected, for the leaſt falſity that occurs in them, becauſe falſaries ſhould never be countenanced in any thing, and that the Exemptions whereof we ſpeak are odious and againſt the Canon Law. It is then abſolutely neceſſary, that they who pretend to be exempted ſhould produce good Originals to prove their Exemptions, at leaſt that theſe Falſities be not to be found in the Acts that have been approved by Princes or other Superiour Powers; and after all, they ought to be very carefully examined. That we may know the nature of Acts, it is to be obſerved, that Monaſteries have ſometimes got their Titles and Priviledges confirmed by Princes and other Superiours, upon Information that the Ancient Titles were ſo old and worn out, that it was hard to read them; and then others were ſubſtituted in place of the Ancient. Theſe Renovations were not always very ſincere: For the Old writings were ſometimes forged, and beſides they added things that ſuited not with the times of thoſe who were pretended to have granted the Ancient Priviledges.

ledges. But since he who had power to grant Priviledges himself, confirmed them, they could not be accused of falsity, unless there was surprise in the case, and that lies had been alledged in the Petition; because it is a general Maxim, that every Petition or Supplication ought to be grounded on truth. After all, these Priviledges which are said to be substituted in place of others more Ancient, are not easily to be admitted: For that would be to open a door to a great deal of Forgery; And Besides, a Title cannot be substituted in place of another, by way of renewing and confirmation, unless the latter make mention of the former, and that it be expresly mentioned, that that last Priviledge hath only been given in confirmation of the Ancient. And thus you have in a few words the Principal Rules that are to be observed in the Examination of Titles, which Monasteries and other Churches that pretend to be Exempted or Priviledged, produce for Justifying their Exemptions and Immunities. Many instances

inſtances of falſe Titles might here be alledged which would render the Rules much more intelligible: But that matter is not to be handled to the bottom, without engaging into a great many inquiries that are wide of our Subject, and require a particular Treatiſe.

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*FINIS.*